MEMORANDUM

To: Portland Water Bureau

From: Anita Cate Smyth, M.S., SPWS

Date: May 5, 2025

Re: Portland Water Bureau Filtration Facilities: Response to Remand Comments Regarding Raw Water Alignment Road

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This memorandum responds to comments pertaining to construction activities on 36910 SE Lusted Road along the raw water pipeline alignment. At this location, an existing dirt farm access road was altered to enable it to support construction access.

The existing farm access was an unimproved dirt access prior to Portland Water Bureau's (PWB) commencement of construction on the property to prepare for installation of the subsurface raw water pipeline (see photo below). As confirmed by the wetland delineation report approved by the Oregon Division of State Lands, the farm road was located between two jurisdictional resources. The wetland south of the road surrounds a man-made pond identified as Water #3 in the delineation. Water from the pond passes under the road to the north via two culverts. The road surface was irregular, with tracks carved in from use during wet conditions. The road margin was somewhat vegetated but sediment-laden road runoff drained to the nearby wetland and drainageway.

The farm road was insufficient to provide construction access for two reasons: it was too narrow to accommodate construction equipment, and the existing culverts lacked the ability to support the weight of that equipment. To improve the capacity of the road to provide the necessary construction access without disturbing the road surface or the nearby pond and wetlands, a structure was built on top of the dirt road when construction commenced.

The foundation of the structure is steel plating. This plating supports a construction mat and plywood structure that enables the project to bring construction cranes across to the work area. Gravel is contained in geotextile fabric to prevent generation and migration of dust and sediment, and biodegradable wattles are anchored next to the silt fence to provide redundant Best Management Practices preventing the transport of sediment in sheet flow. Combined, these measures stabilized loose soil on the existing roadway and avoided new vectors of sediment generation.

The wooden parts of the structure are constructed from untreated wood products. Slots between the timbers allow passage by amphibians and small mammals.

Upon completion of the project, the temporary steel plates will be removed. While the majority of the property will be returned to pre-construction conditions, the project team advises retaining the structure in between the wetlands for use by the property owner and for future PWB access to the pipeline. Retaining the structure avoids soil disturbance and provides improved access for the property owner (Bissell). The property owner has requested that the structure remain. Importantly, the structure improves and stabilizes a road surface that pre-construction was prone to sediment migration into the pond and wetlands.

Leaving the structure will not impact hydrology on either side of the roadway; the water enters from offsite and the current flow of water through the culverts will remain unaffected. The attached planting plan will re-establish native vegetation in disturbed areas and includes additional plantings to improve the riparian area surrounding the wetland. The planting plan includes herbaceous and shrub species native to wetland margins and lacking extensive root systems that would be anticipated to destabilize the roadbed and create erosion potential.

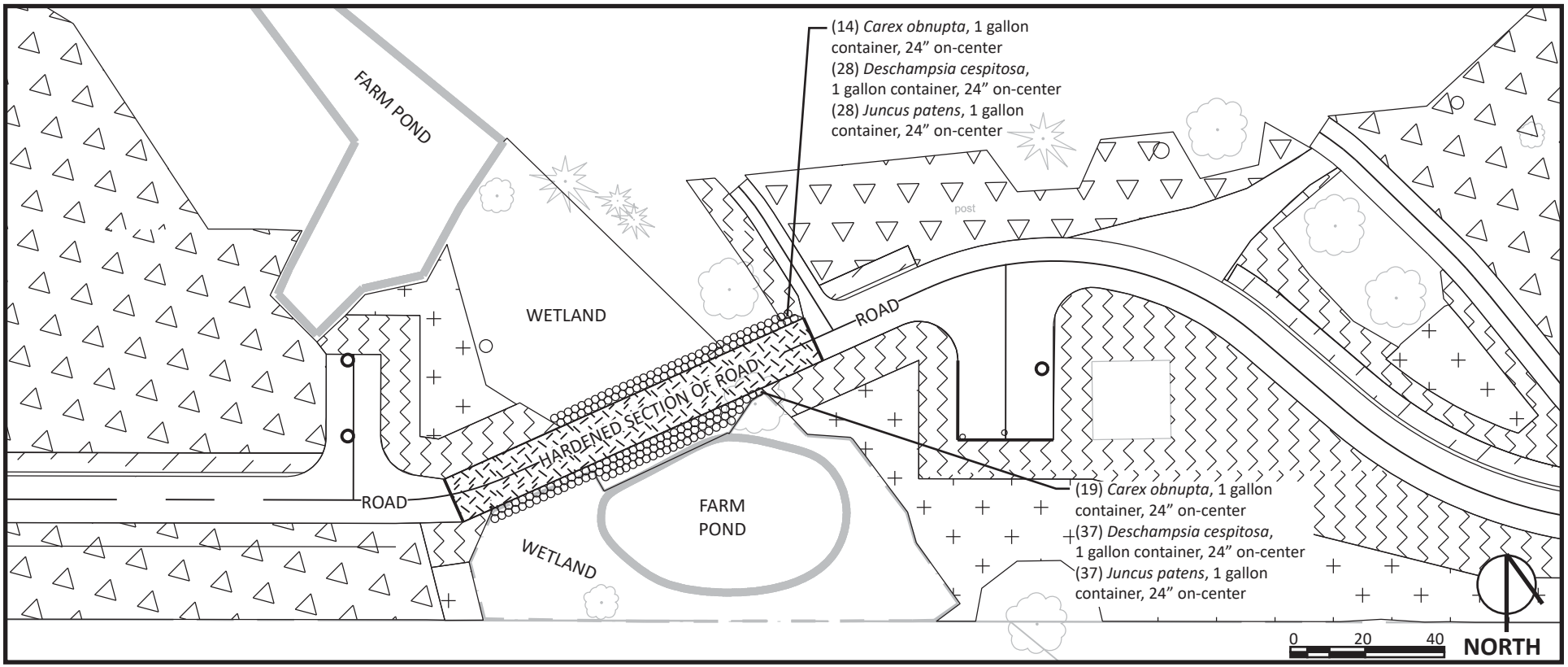
Summary

- The construction-related alteration of the roadway widened the drive surface to 12 feet but did not impact the pond or wetlands.
- Construction of the equipment access preserved the existing culverts and stabilized a road surface prone to sediment migration into the pond and wetlands.
- The structure utilizes impact-minimizing measures such as wrapping gravel in geotextile fabric to avoid creation and dispersal of fines that could migrate into the waterway, and use of non-pressure-treated lumber. Wattles and silt fence add additional protection.

- Restoration of the dirt road to pre-construction conditions would likely result in impacts to the pond and wetlands. In contrast, retention allows the road surface and road prism to remain undisturbed while reducing the sedimentation compared to the original road surface. Silt fencing will remain until vegetation is established, then removed.
- The culverts are protected, and the erosion control measures installed during construction are not changing the rate of water flow into or out of the pond or wetlands. The effect of the erosion control measures on the precise rate or location of water flow to the wetlands during construction is minimal, affecting only runoff from the road itself, and will not have a long-term impact on the surrounding wetlands or ponds.
- Post-construction, the structure does not alter the hydrology of the pond or wetland; the water entering from offsite is unaffected and the flow through the culverts was never altered by construction activities. Restoration will stabilize disturbed soil and improve native vegetation functions adjacent to the roadway. See attached planting plan.

For these reasons, I conclude that the post-construction road left in place following construction will not adversely affect the wetland and pond functions or the habitat within and surrounding the adjacent wetlands and ponds.

WETLAND ENHANCEMENT AT 36910 SE LUSTED ROAD



PLAN

1"=40'-0"

LEGEND

Pasture Seeding

SEC Seeding

Forest Shrub Mix with Native Understory Seeding

Filter Strip Seeding

Existing Trees

Forest Shrub Mix		
Botanical Name	Common Name	Planting Size
Holodiscus discolor	Oceanspray	Bare Root 1+1
Mahonia aquifolium	Tall Oregon Grape	Bare Root 1+1
Oemleria cerasiformis	OsoBerry	Bare Root 1+1
Philadelphus lewisii	Mock Orange	Bare Root 1+1
Ribes sanguineum	Redflowering Currant	Bare Root 1+1
Rubus parviflorus	Thimbleberry	Bare Root 1+1
Sambucus racemosa	Red Elderberry	Bare Root 1+1
Symphoricarpos albus	Snowberry	Bare Root 1+1

1. Seed area With Forest Seeding Mix prior to planting shrubs, see 32 92 00 Seeding for seed mix.
2. Install bareroot plant material using the Slit Planting Method/Detail 3293-002 or the Side Hole Planting Method /Detail 3293-003 sheet STD-L-0001.
3. For typical layout, see Forest Restoration Shrub Layout, STD-L-0001 See Detail 3293-001

DSL USE ONLY

DSL No. 64845GA Revised

Issue Date: April 2, 2024 Expiration Date: April 2, 2027

In-Water Work Period: n/a to n/a

X ☐ Eligible 4/2/2024 (Date) ☐ Incomplete _____ (Date) ☐ Ineligible _____ (Date)

☐ Activity on state-owned waterway ☐ Proprietary Auth on File: _____

☐ Access Agreement attached ☐ Further Action Required by Applicant:

☐ Registration ☐ Lease/License ☐ Other Contact: _____

RC Signature: Melinda Butterfield Digitally signed by Melinda Butterfield Date: 2024.04.02 14:46:12 -07'00'

GENERAL AUTHORIZATION ELIGIBILITY VERIFICATION FORM AND NOTICE FOR EXEMPTION OF CERTAIN VOLUNTARY HABITAT RESTORATION ACTIVITIES

1. RESPONSIBLE PERSON CONTACT INFORMATION

Name (print)	Affiliation (company or agency)	
Bonita Oswald	Portland Water Bureau	
Mailing address or PO Box 1120 SW 5th Ave., Rm 405		
City Portland	State OR	Zip Code 97204
Phone number (503) 865-6039	Cell or alternate number	
E-mail bonita.oswald@portlandoregon.gov	Fax number	

2. LANDOWNER INFORMATION (if different than responsible party)

Name (print)		
Shelley L Ekstrom LLC		
Mailing address or PO Box 29722 SE Division St.		
City Troutdale	State OR	Zip Code 97060
Phone number	E-mail	

3. PROJECT LOCATION INFORMATION

County: Multnomah		Nearest City: Gresham	
Physical address or description: North of SE Dodge Park Boulevard, 2000' east of Altman Road			
☐ Stream	Name of stream	Tributary of	River mile
Is this designated essential salmon habitat (ESH)? ○ Yes ◉ No			
☑ Wetland	Cowardin Class PEMA	HGM Slope Valley	

LATITUDE AND LONGITUDE (In Decimal Degrees, example: DD.DDDDDD)
LEGAL DESCRIPTION FOR PROJECT
(Check the description that applies and enter information below)

☒ Project with single removal-fill site. Provide the information for the removal-fill site under "Start."
☐ Project with multiple removal-fill sites. Provide the following for the project center point "Start."
☐ Linear project. Provide the following information for the project start point and end point.

Start point Latitude: ~~45.4690~~ **Start** Longitude: ~~-123.3186~~ 45.469061, -122.31897
Township: 1S Range: 4E Section: 21A ¼ - ¼ Section: _____ Tax lot(s): 802, 9

End point Latitude: _____ **End** point Longitude: _____
Township: _____ Range: _____ Section: _____ ¼ - ¼ Section: _____ Tax lot(s): _____

4. PROJECT INFORMATION

Anticipated project dates: Start (mo) 12 (yr) 2024 Completion (mo) 01 (yr) 2025

5. ACTIVITIES FOR THIS PROJECT. Check all that apply.

☐ Minimal Disturbance within ESH Waters *No Fee*

☐ Piling Placement and Removal in Non-Tidal Waters *No Fee*

☒ Temporary Impacts to Non-tidal Wetlands *Fee May Apply*

☐ Waterway Bank Stabilization *No Fee*

☐ Certain Transportation-Related Activities *Fee May Apply*

☐ Removing and Disposing of Sediment Behind Tidegates and Hydraulically Closed Perimeters *Fee May Apply*

☐ Waterway Habitat Restoration *No Fee*

☐ Wetland Ecosystem Restoration *No Fee*

☐ Notice for Exemption of Certain Voluntary Habitat Restoration Activities *No Fee*
(Must be combined with another activity listed above, see page 16 for further information.)

RESOURCE GAINS AND LOSSES SHEET
for
Temporary Impacts to Non-Tidal Wetlands, Wetland Ecosystem Restoration and Waterway Habitat Restoration

Waterway Habitat Gains:

☐ In-stream habitat improvement: Total stream length treated: _____ miles

☐ Stream miles opened that were previously inaccessible to migrating fish: _____

☐ Restored side channels and alcoves: _____ stream miles

☐ Riparian upland vegetation planting: _____ stream miles

Wetland Habitat Gains:

Expected Results	Acres		Cowardin Class	HGM Class
Restoration/Reestablishment (Restore functions to former wetland)		of		
		of		
		of		
Enhancement/Rehabilitation (Repair functions to a disturbed wetland)		of		
		of		
		of		
Creation (Create a new wetland from upland)		of		
		of		
		of		
Temporary Wetland Impacts	.002	of	PEMA	Slope/Valley
		of		

DSL USE ONLY

RC Confirmed? ☒K

RC Initials: MB

RGL #_____

RGL Data Entry Initals: _____

General Authorization for Temporary Disturbance to Non-Tidal Wetlands

OAR 141-089-0700 through 141-089-0715

Project purpose (Check all that apply):

- ☐ Construction staging
- ☒ Placement or maintenance of utility lines
- ☐ Constructing temporary access
- ☐ Other. Describe: _____

Eligibility (All must apply):

- ☒ Project will consist of 0.2 acres or less of temporary impacts to wetlands
- ☒ Project will not permanently convert wetlands to upland
- ☒ Project will not convert forested or shrub wetlands within the project site to different Cowardin Class

Area and Volume:

0.00 acres of Palustrine Cowardin Class Slope/Valley HGM wetland

Fill 50.4 cubic yards + Removal 42.5 cubic yards = 92.9 cubic yards disturbance

For Complete Notification you must attach the following:

☒ Current Delineation: A copy of a valid, Department approved delineation map and concurrence letter for Wetland Delineation Number: WD 2023-0085

☒ Fee Due: $250.00 (If 50 cubic yards or more of total disturbance).

☒ Project Description: Brief description of the project and construction methods to be used. Provide sufficient detail to demonstrate compliance with restoration of ground contours and vegetation, required timing for rectification, post construction reporting, protection of ground surface, prevention of hydraulic piping, and stockpiling of topsoil.

☒ Resource characteristics: Description of the biological and physical characteristics of the wetland or waterway. Include HGM and Cowardin Class and current land use. Indicate if any wetland type of conservation concern is within the project area. (For help see: http://www.oregon.gov/dsl/WW/Documents/wetland_cons_concern.pdf)

☒ Project location map: Sufficient detail to allow person to drive to the site from the nearest city/town or major highway intersection. Show boundaries of the *entire project*.

☒ Project area photo(s): Photo(s) of existing conditions required for all activity areas.

☒ Plan view drawing(s): Include existing and proposed contours, scale, jurisdictional wetland boundary (if delineated), clear identification of areas proposed for removal or fill, location of cross-section(s). *Do not use "typical" drawings.*

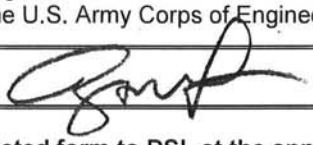
☒ Cross-section drawing(s): Include existing and proposed elevations, horizontal and vertical scale; jurisdictional wetland boundary (if delineated). *Do not use "typical" drawings.*

DSL Use Only:
DSL Determination Eligible Date 4/2/2024 RC Initial MB

6. Signature

By signing below, I understand:

- The information provided herein is, to the best of my knowledge and belief, true, complete, and accurate.
- I am responsible for complying with the requirements and conditions set forth in the applicable administrative rules for General Authorizations and for Voluntary Habitat Restoration activities.
- This approval does not authorize trespass on the lands of others. The responsible party shall obtain all necessary access permits or rights-of-way before entering lands owned by another.
- If this is state-owned submerged or submersible land, there may be additional easements, royalties and/or other requirements by DSL's Aquatic Resource Management Program.
- This approval does not authorize any work that is not in compliance with local zoning or other local, state or federal regulation pertaining to the operations described herein. The responsible party shall obtain necessary approvals and permits before proceeding under this authorization.
- All work done under this authorization must comply with OAR Chapter 340, Standards of Quality for Public Waters of Oregon.
- When listed species are present, the responsible party must comply with the State Endangered Species Act and the Federal Endangered Species Act.
- Violations of the terms and conditions of this authorization are subject to administrative and/or legal action, which may result in revocation of the approval or damages. The responsible party is responsible for the activities of all contractors or other operators involved in work done at the site or under this approval.
- The Department of State Lands may, at any time, by notice to the responsible party, revoke or modify this approval if it determines the project scope or conditions of the General Authorization are insufficient to minimize individual or cumulative environmental effects in accordance with OAR 141-085.
- 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 approval.
- In issuing this authorization, the Department of State Lands makes no representation regarding the quality or adequacy of the approved project design, materials, construction, or maintenance except to approve the project's design and materials, as set forth herein, as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapter 196 and related administrative rules.
- Responsible person 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 approved improvements.
- When approval from ODFW for Fish Passage is required, written autorization must be received from ODFW prior to ground disturbing activities.
- A permit from the U.S. Army Corps of Engineers may also be required.

Signature		Date	2/27/24

Please mail completed form to DSL at the appropriate regional office for your project location:

DSL – West of the Cascades:
Department of State Lands
775 Summer Street, Suite 100
Salem, OR 97301-1279
Phone: 503-986-5200 Fax: 503-378-4844

OR

DSL - East of the Cascades:
Department of State Lands
951 SW Simpson Ave, Suite 104
Bend, Oregon 97702
Phone: 541-388-6112 Fax: 541-388-6480

Save | Clear Form | Print form

MEMORANDUM

To: Melinda Butterfield
From: Anita Cate Smyth, M.S., SPWS
Date: December 20, 2023
Re: PWB Bull Run Filtration Program
Supplemental narrative for GA for Temporary Disturbance to Non-Tidal Wetlands

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This document provides supplemental information pertinent to the General Authorization Permit Application forms for proposed temporary impacts to non-tidal wetlands at one location in unincorporated Multnomah County. The applicant, the Portland Water Bureau (PWB), proposes to construct a water line to connect the proposed water filtration facility with the existing water distribution system. This activity proposes temporary impact to a small area of emergent wetland.

Introduction

The PWB's Water Filtration Facility is proposed in eastern Multnomah County, on a plateau approximately 0.5 mile west of the Sandy River (Figure 1). The facility is located on SE Carpenter Lane. The new facility will remove the microorganism *Cryptosporidium* and must be completed by October, 2027 to comply with federal and state water quality rules. The project includes raw and finished water pipelines connecting to the existing Bull Run conduit system.

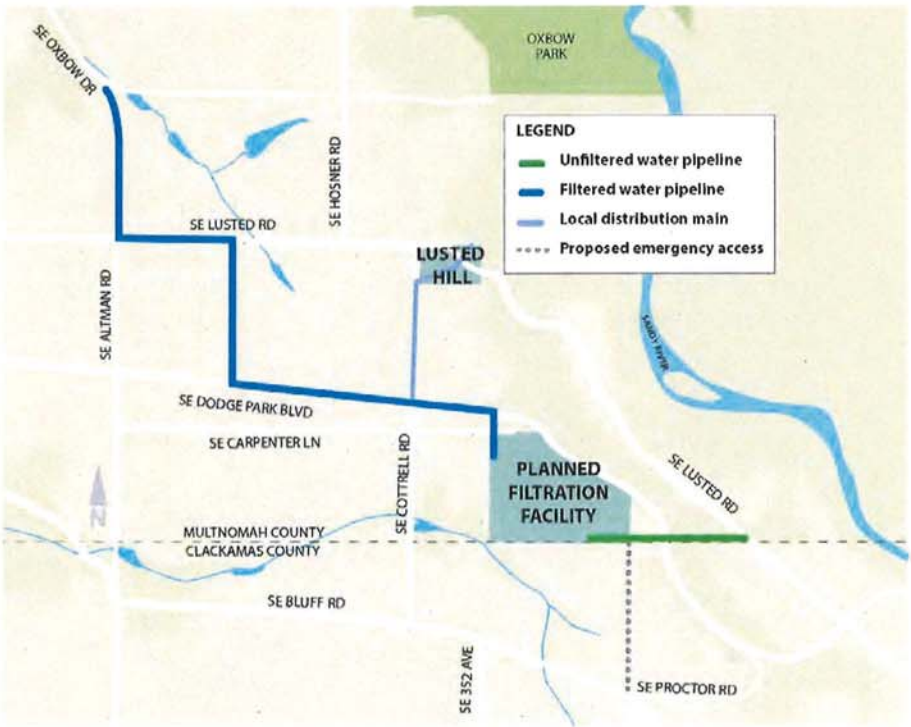


Figure 1. Vicinity Map

The proposed temporary impact lies north of SE Dodge Park Boulevard, west of SE Cottrell Road (see Appendix A.1 and A.2 for Project location maps, and Appendix A.4-A.6 for Temporary Wetland Impact Area exhibits). The impact area lies in the headwaters of Beaver Creek, in an area of locally convergent drainage. This area collects water from three sources: road runoff from SE Dodge Park Boulevard, water from a culvert that conveys water from offsite to the south under SE Dodge Park Boulevard, and agricultural runoff from the north, east, and west. The water enters a pipe that conveys the water under the agricultural field to the northwest, ultimately into Beaver Creek. The vegetation community is dominantly reed canarygrass (*Phalaris arundinacea* – see site photos in Appendix A.3).

At the August 15, 2023 Streamlining Committee Meeting, Melinda Butterfield, Aquatic Resource Coordinator for DSL, raised the question of whether the impact would truly be temporary; specifically, whether the project activities would create a drainage effect, reducing the area of the wetland in the future. This question was addressed in a memorandum to DSL dated September 23, 2023. In summary, due to the topographic position of the project and measures taken in the engineering of the backfill material, the project activities are highly unlikely to create a drainage or dewatering effect that would result a permanent wetland impact by reducing hydrology. Based on information presented in the memorandum, and pending review of the full application, Ms. Butterfield replied via email on October 4, 2023 that it appeared that the impacts would be temporary and project may qualify for a General Authorization provided the project met the other requirements for that permit process.

Project Description

The proposed action is to construct a segment of finished water pipeline along the right-of-way of SE Dodge Park Boulevard. The pipe alignment enters the general area of wetland impact from the east within the road prism and turns north near station 150+00, immediately to the east of an existing stormwater culvert under SE Dodge Park Boulevard (Appendix A.4). The pipe alignment proceeds north into an agricultural field toward SE Lusted Road, crossing a small wetland at the base of the roadway embankment. The existing stormwater culvert west of the proposed pipe alignment will also be replaced at this time.

The pipe to be constructed is a 66-inch mortar-lined steel pipe, constructed at a variable depth ranging from 4 to 8 feet of cover. The length of the impact is approximately 11 feet. The square footage of temporary wetland impact is 83 square feet, the excavated volume is 50.4 cubic yards, including topsoil salvage, with 42.5 cubic yards replaced in the trench. The trench construction includes several distinct layers as shown in Appendix A.6:

- A base layer of structural fill and bedding material below the pipe
- A 78-inch Pipe Zone, which includes the pipe itself and the structural fill around it. This layer may include geotextile fabric.
- A variable-width Trench Zone, which is typically a 9.5-foot wide open trench with excavated materials sidecast next to the trench. This zone also includes transverse concrete blocks (trench cutoff walls), outside of wetland areas, and within the trench to prevent the piping of water through or under the structural fill.

- Topsoil Zone, utilizing stockpiled soil from the site, which will restore the pre-disturbance surface contours.

Construction of the pipelines is by open cut, involving excavation from the surface to the depth of the pipeline trench, installation of the pipeline, and backfill of the trench. Ground disturbance for the construction of pipeline by open cut includes the width of the pipeline trench for the length of the open cut plus associated construction zones adjacent to the pipeline trench for its entire length, temporary public traffic or access, and erosion and sedimentation control measures. Adjacent to the work within this wetland, construction activity will be comprised of construction vehicle traffic to install trench shoring, excavate the trench, and place the pipeline. Following construction completion, tasks include backfilling the trench, and removing the shoring, sheeting, and bracing materials used to stabilize the construction zone.

Shoring, sheeting, and bracing will be incrementally removed by pulling materials out of the ground as the backfill material is placed and compacted in the pipe trench. Some materials may remain in place as necessary to maintain safety and protect adjacent facilities during the pipeline or structure backfilling. In this case, no shoring, sheeting, or bracing materials will be left within 5 feet of the finished grade elevation to avoid conflicts with farming activities.

Excavated material will not be placed or stored within the wetland. Excavated topsoil to be saved will be stockpiled on the private property in a temporary construction easement (see Appendix A.4 for the location) and used to backfill the same trench. Excavated material below the top 2 feet of topsoil will be hauled offsite for disposal in an upland location and backfill material for the same volume will be placed directly in the trench.

Best Management Practices include the following:

- Isolation of the work area with construction fencing, as well as sediment control fencing and compost filter socks along the roadway embankment and the edges of the disturbance area, including the topsoil stockpile areas shown on Appendix A.4.
- Straw wattles in the area of the existing stormwater pipe under Dodge Park Boulevard.
- Contractor will prepare a dewatering plan for accumulated water from precipitation and uncontaminated groundwater seepage in excavation.
    - Dewatering systems will be required to filter the discharge through at least two sediment barriers including a filter bag and sediment fence.
    - Dewatering systems will be required to limit discharge quantity as specified for each stormwater basin.
- Dust control will be addressed by water spraying and covering of soil piles to mitigate wind-blown soil.
- Temporary soil stabilization following construction will be done with blown straw, compost, and/or tackifier. During inclement weather, additional stabilization will be provided to prevent sediment discharge.
- Permanent soil stabilization will be provided by establishment of an herbaceous groundcover via seeding at the earliest appropriate seeding season following construction. The blend below will provide permanent stabilization of disturbed soil.

ROADSIDE SEEDING		
BOTANICAL NAME	COMMON NAME	% BY WEIGHT
FESTUCA RUBRA VAR. SEALINK	SEALINK CREEPING RED FESCUE	55.00%
FESTUCA OVINA VAR. AZAY BLUE	AZAY BLUE SHEEP FESCUE	18.00%
TRIFOLIUM FRAGIFERUM	STRAWBERRY CLOVER	8.00%
NEMOPHILA MENZIESII	BABY BLUE EYES	5.00%
LIMNANTHES DOUGLASII	DOUGLAS MEADOWFOAM	4.00%
ARMERIA MARITIMA	THRIFT SEAPINK	2.00%
TRIFOLIUM REPENS VAR MICROCLOVER	MICROCLOVER	3.00%
LOBULARIA MARITIMA	SWEET ALYSSUM CARPET OF SNOW	2.50%
ACHILLEA MILLEFOLIUM	COMMON YARROW	1.50%
BELLIS PERENNIS	LAWNDAISY	1.00%
	TOTAL:	100.00%

Resource Characteristics

The wetland within the study area is mapped as Wetland 1 in the Bull Run Filtration Program wetland delineation report; see Wetland Site Map (Appendix A.2). This feature is a linear wetland that formed against the roadway fill slope of Dodge Park Boulevard. Water from the adjacent agricultural area drains to the south, collecting against the roadway and flowing to the local low point of the wetland area. At this location, a break between the stormwater culvert under the roadway and a pipe in the agricultural field allows the water collected against the roadway embankment to flow into the drainage system and offsite. Some water ponding occurs, allowing a colony of reed canarygrass to thrive outside the cultivated area.

The Cowardin Classification applicable to Wetland 1 is Palustrine Emergent, Temporarily Flooded based on the emergent vegetation community and short-term ponding. The Hydrogeomorphic Classification is Slope Valley, based on seasonal groundwater support of hydrology through the site. No wetland types of concern are present in the study area.

Appendix A

A.1. Wetland Index Map (Figure 5)

A.2. Wetland Site Map (Figure 5a)

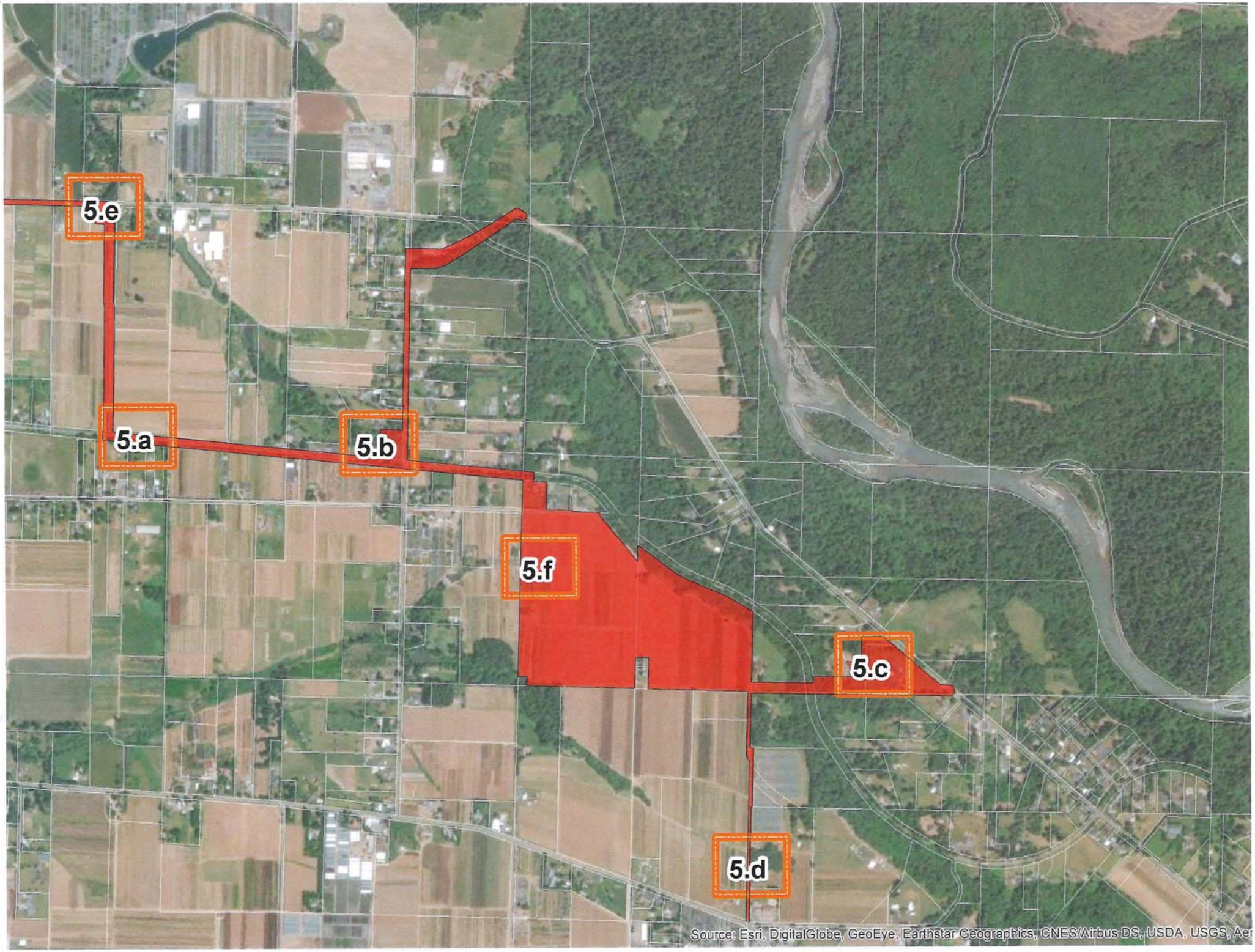
A.3. Project Area Photos

A.4. Temporary Wetland Impact Area: Plan View (Exhibit 1)

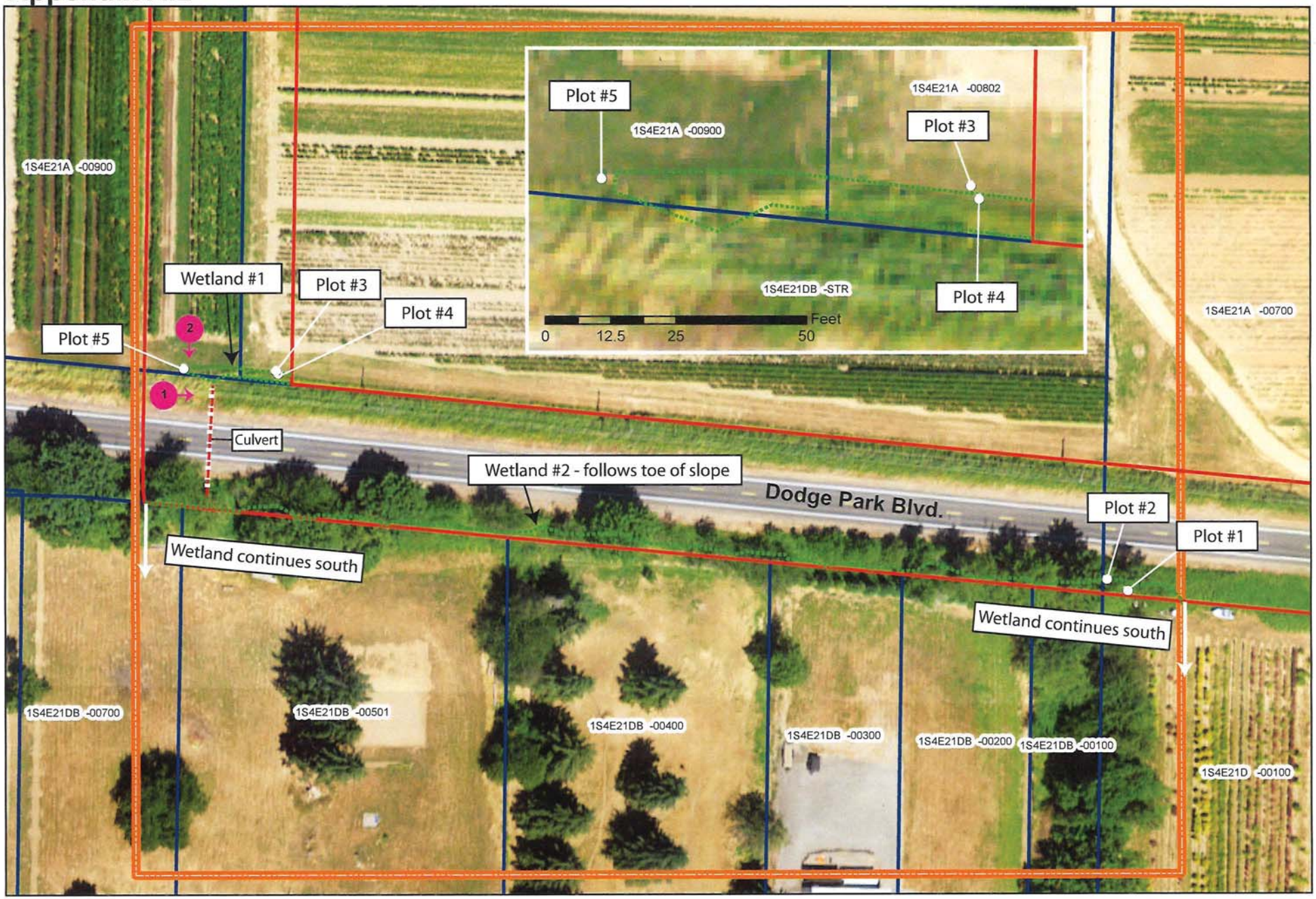
A.5. Temporary Wetland Impact Area: Profile View (Exhibit 2)

A.6. Temporary Wetland Impact Area: Cross-Section (Exhibit 3)

A.7. Pipeline Plan and Profile


5.e
5.a
5.b
5.f
5.c
5.d
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, Aer

Appendix A.2



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5a: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | # Photopoint & Direction of View

Key Map Area | Wetland Boundary

Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

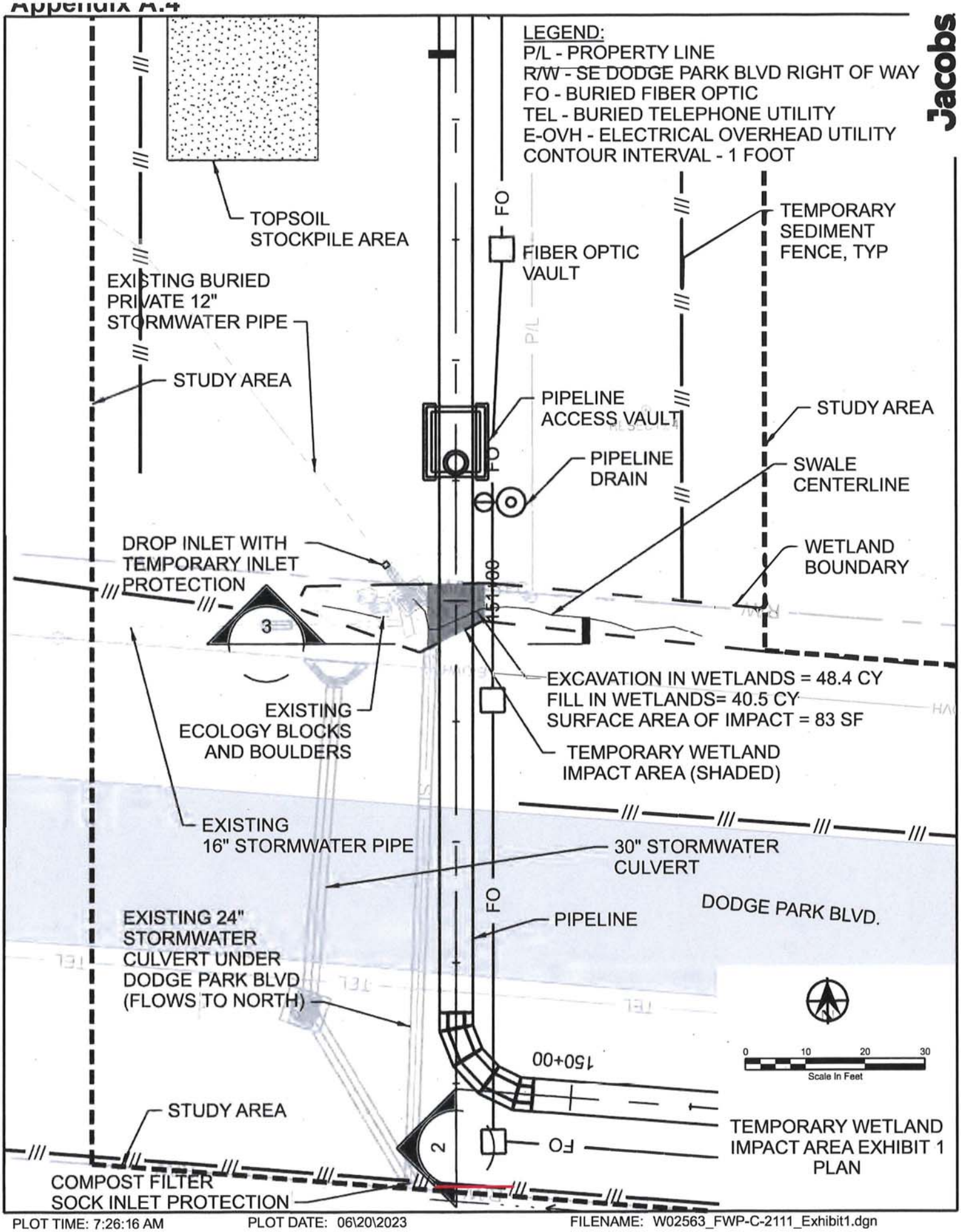
0 25 50 100 Feet

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl

Appendix A.3

Photopoint 1: Below embankment along Dodge Park Boulevard. Steep slope down to agricultural field. Water collects along the slope and converges to this point, where water is collected in a culvert and exported.

Photopoint 2: Culvert discharging from under Dodge Park Boulevard flows briefly at the surface before entering another culvert system. The break is to allow water from along the embankment to drain into the daylighted area and drain from the area.



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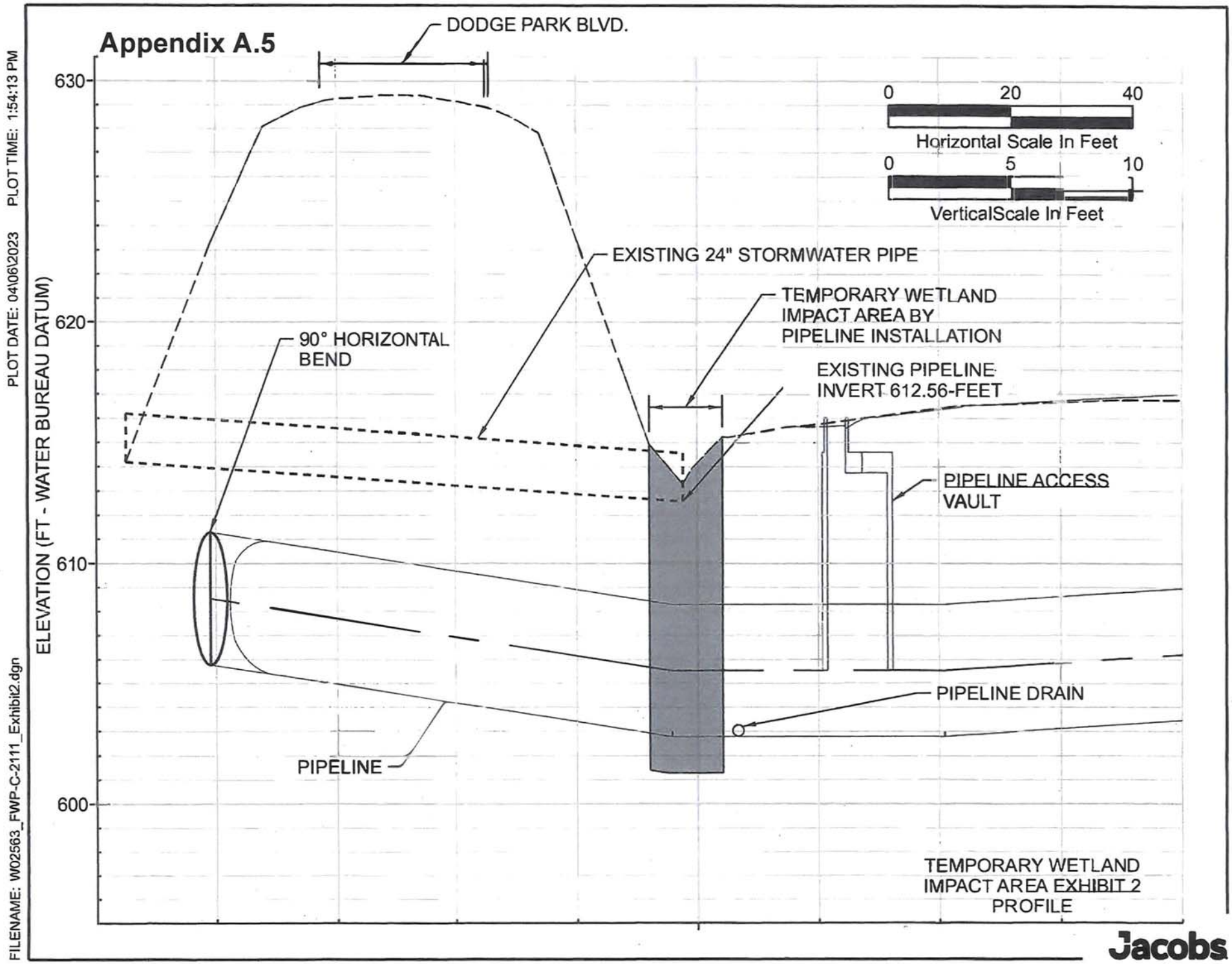

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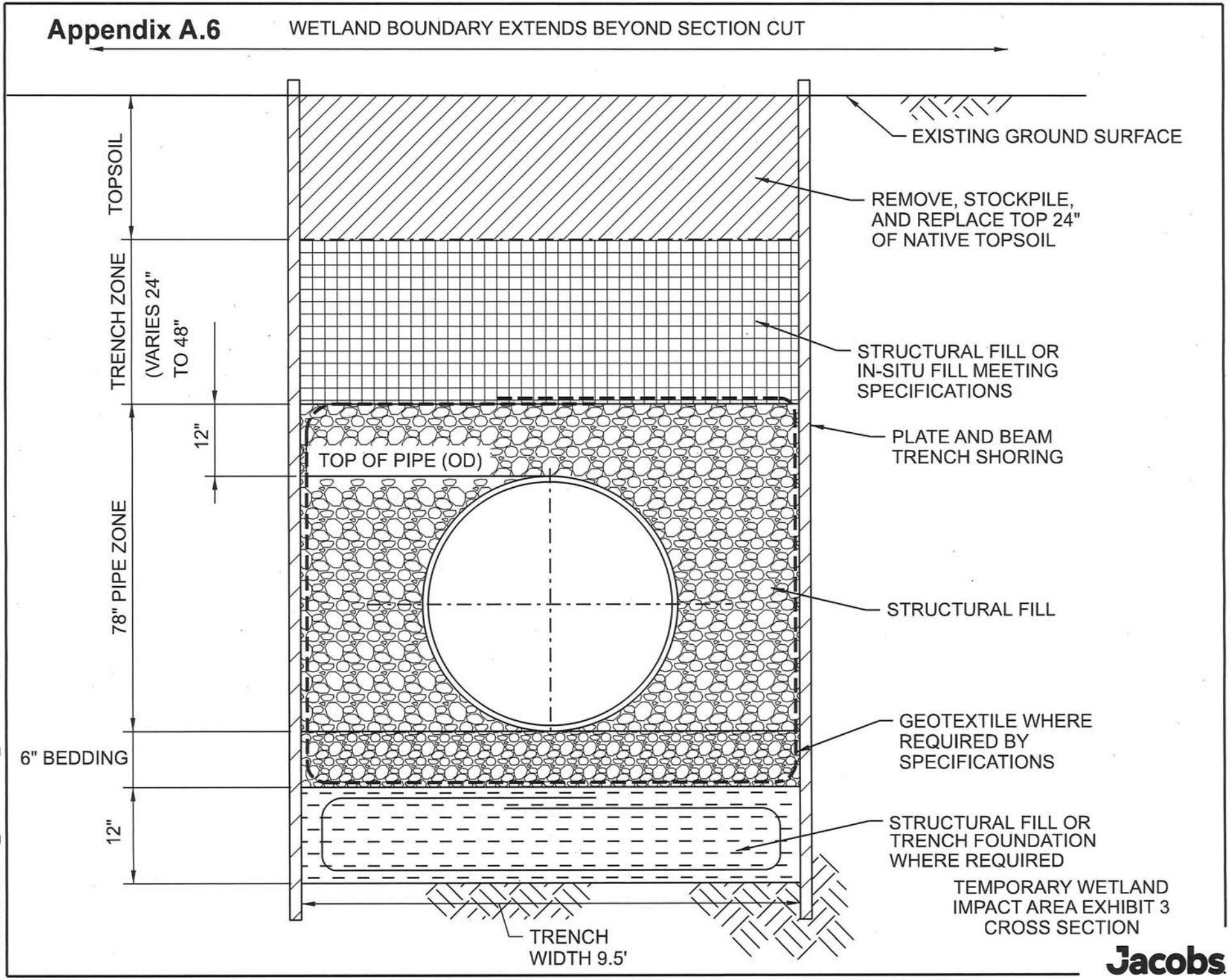
Appendix A.6



TEMPORARY WETLAND IMPACT AREA EXHIBIT 3 CROSS SECTION

Jacobs

PLOT DATE: 04\06\2023 PLOT TIME: 1:49:57 PM
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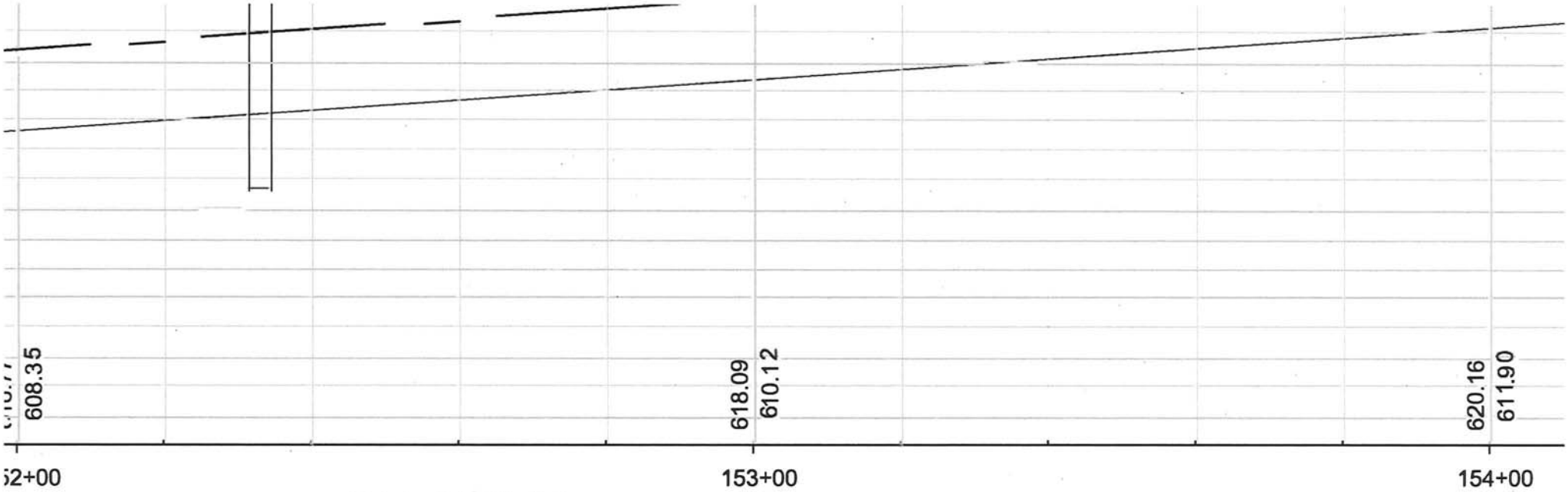
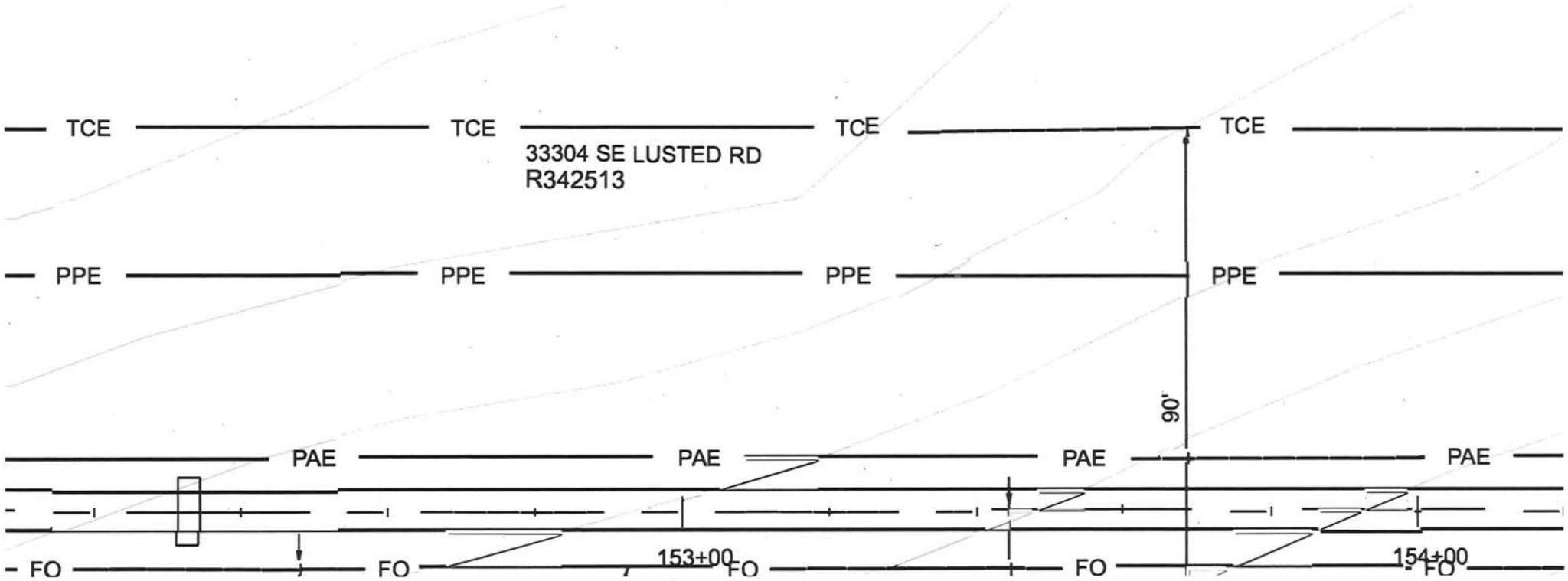


PROFILE

SCALE: HORIZ - 1"=20'
VERT - 1"=5'



Appendix B

DSL Concurrence Letter

Oregon
Tina Kotek, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

July 10, 2023

Portland Water Bureau
Attn: Bonita Oswald
400 SW 6th Avenue, Suite 300
Portland, OR 97204

Re: WD # 2023-0085 **Approved**
Wetland Delineation Report for the Bull Run Filtration Project
Multnomah and Clackamas Counties; T1S R4E S15; S16; S21; S22; S23; S26; S27; Multiple Tax Maps and Tax Lots
(See Attached Table and Maps)

Dear Bonita Oswald:

The Department of State Lands has reviewed the wetland delineation report prepared by Winterbrook Planning for the site referenced above. Please note that the study area includes only a portion of the tax lots described above (see the attached maps and table). Based upon the information presented in the report, and additional information submitted upon request, we concur with the wetland and waterway boundaries as mapped in revised Figure 5 Index and 5a through 5g of the report. Please replace all copies of the preliminary wetland maps with these final Department-approved maps.

Within the study area, 6 wetlands (Wetland #1 through #6, totaling approximately 0.44 acres) and 4 waters [Water #1 (tributary to Beaver Creek), Water #2 (pond), Water #3 (stream/pond complex) and Water #4 (roadside ditch)] were identified. The wetlands and Water #1, #2 and #3 are subject to the permit requirements of the state Removal-Fill Law. Under current regulations, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined). Water #4 is exempt per OAR 141-085-0515(10) and is not subject to these state permit requirements.

This concurrence is for purposes of the state Removal-Fill Law only. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact Chris Stevenson, PWS the Jurisdiction Coordinator for Multnomah County at (503) 798-7622.

Sincerely,

Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

ec: Tim Brooks, Winterbrook Planning
Anita C Smyth, SPWS, Winterbrook Planning
Multnomah County Planning Department
Clackamas County Planning Department
Trey Fraley, Corps of Engineers
Melinda Butterfield, PWS, DSL
Amy Landvoigt, Oregon Department Water Resources
Haley Teach, DEQ
Ben Walczak, ODFW

WETLAND DELINEATION / DETERMINATION REPORT COVER FORM

A complete report and signed report cover form, along with applicable review fee, are required before a report review timeline can be initiated by the Department of State Lands. All applicants will receive an emailed confirmation that includes the report's unique file number and other information.

Ways to submit report:

- **Under 50MB** - A single unlocked PDF can be emailed to: wetland.delineation@dsl.oregon.gov.
- **50MB or larger** - A single unlocked PDF can be uploaded to DSL's Box.com website. After upload notify DSL by email at: wetland.delineation@dsl.oregon.gov.
- OR a hard copy of the unbound report and signed cover form can be mailed to: Oregon Department of State Lands, 775 Summer Street NE, Suite 100, Salem, OR 97301-1279.

Ways to pay review fee:

- By credit card on DSL's epayment portal after receiving the unique file number from DSL's emailed confirmation.
- By check payable to the Oregon Department of State Lands attached to the unbound mailed hardcopy OR attached to the complete signed cover form if report submitted electronically.

Contact and Authorization Information

☒ Applicant ☐ Owner Name, Firm and Address:
Tim Brooks, Principal, Winterbrook Planning
610 SW Alder St. Suite 810
Portland, OR 97205

Business phone # (503) 827-4422
Mobile phone # (optional)
E-mail: Tim@WinterbrookPlanning.com

☒ Authorized Legal Agent, Name and Address (if different):
Bonita Oswald, Portland Water Bureau
400 SW 6th Ave. Suite 300
Portland, OR 97204

Business phone # (503) 865-6039
Mobile phone # (optional)
E-mail: Bonita.Oswald@PortlandOregon.gov

I either own the property described below or I have legal authority to allow access to the property. I authorize the Department to access the property for the purpose of confirming the information in the report, after prior notification to the primary contact.

Typed/Printed Name: Bonita Oswald **Signature:** [signature]

Date: 02/13/2023 Special instructions regarding site access: ____

Project and Site Information

Project Name: Portland Water Bureau: Bull Run Filtration Project, Multnomah and Clackamas Counties

Latitude: 45.46852093235169 Longitude: -122.31134985550483
decimal degree - centroid of site or start & end points of linear project

Proposed Use:
Drinking water filtration facility with raw and finished water pipelines connecting to the existing Bull Run conduit system.

Tax Map # 1S4E22D-00400, -00100; 1S4E22DB-00300; 1S4E23C-00800, 01400, -01500, -02200; 1S4E21A-00900; 1S4E22BA-00200, 00100; 1S4E15-00801; 1S4E22BC-01300; 1S4E27-00100, 00200; 1S4E26-04800; 05000.
Tax Map # (See Attached Table and Maps)
Tax Lot(s)

Project Street Address (or other descriptive location):
SE Carpenter Lane (across from 35319 SE Carpenter Lane); & tax lots with water pipelines (see Appendix A - Figures)

Township 1s Range 4e Section QQ —

Use separate sheet for additional tax and location information

City: Gresham, Boring County: Multnomah, Clack

Waterway: River Mile:

Wetland Delineation Information

Wetland Consultant Name, Firm and Address:
Anita C. Smyth, SPWS
Wetland Scientist, Winterbrook Planning
610 SW Alder St. Suite 810
Portland, OR 97205

Phone # (503) 869-7897
Mobile phone # (if applicable)
E-mail: ACSmyth@comcast.net

The information and conclusions on this form and in the attached report are true and correct to the best of my knowledge.

Consultant Signature: ACSmyth Date: 2/17/2023

Primary Contact for report review and site access is ☒ Consultant ☐ Applicant/Owner ☐ Authorized Agent

Wetland/Waters Present? ☒ Yes ☐ No | Study Area size: 145.4 acres Total Wetland Acreage: 0.6670

Check Applicable Boxes Below

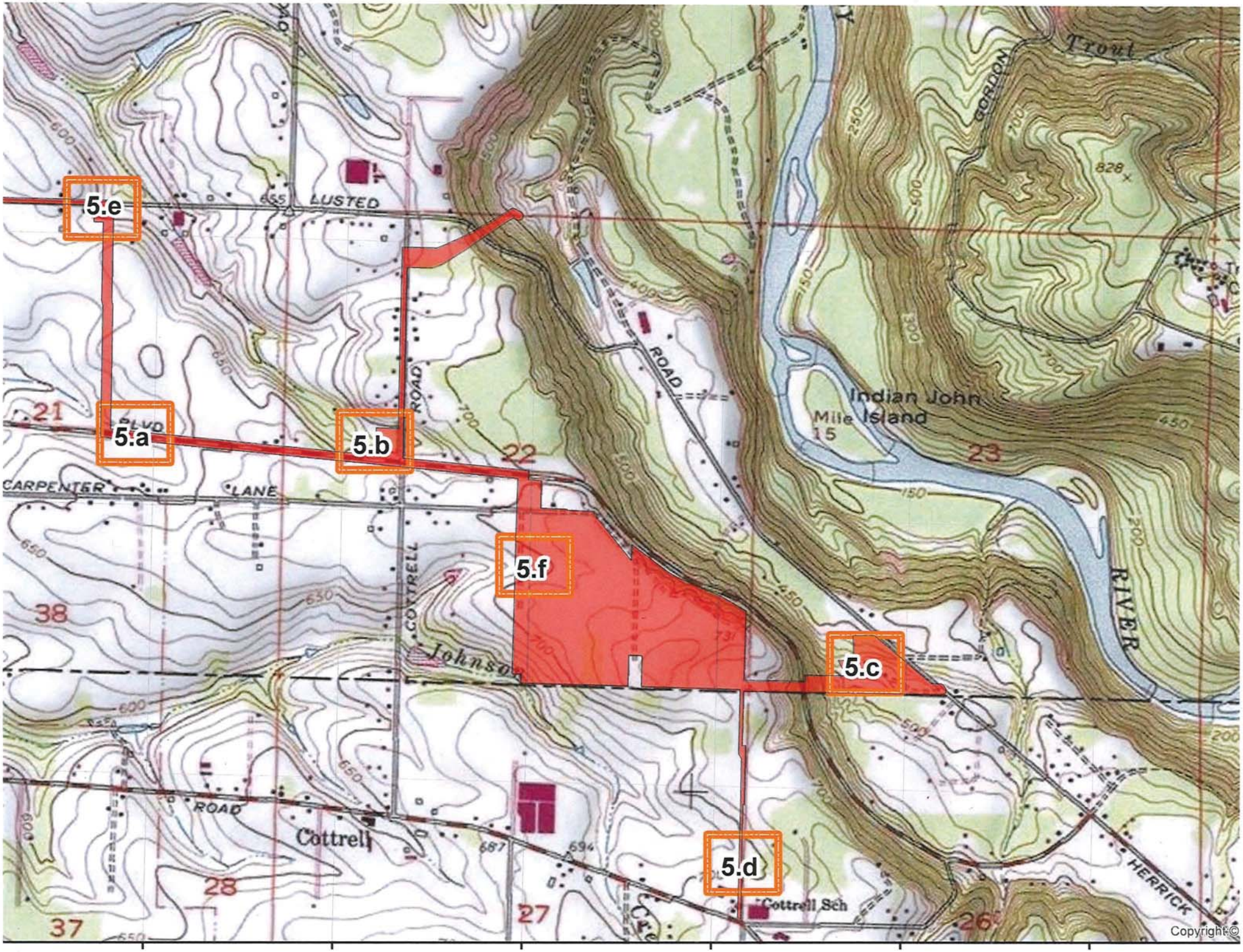
☐ R-F permit application submitted
☐ Mitigation bank site
☐ EFSC/ODOE Proj. Mgr: [ ]
☐ Wetland restoration/enhancement project (not mitigation)
☐ Previous delineation/application on parcel
If known, previous DSL # ____

☒ Fee payment submitted $ 540
☐ Resubmittal of rejected report ($100)
☐ Request for Reissuance. See eligibility criteria. (no fee)
DSL # ____ Expiration date____
☐ LWI shows wetlands or waters on parcel
Wetland ID code ____

For Office Use Only

DSL Reviewer: CS Fee Paid Date: ____/____/____ DSL WD # 2023-0085

Date Delineation Received: 02/21/2023 DSL App.# ____


5.e
5.a
5.b
5.f
5.c
5.d
LUSTED
ROAD
CARPENTER
LANE
BLVD
COTTRELL
ROAD
Johnson
Cottrell
ROAD
Cottrell Sch
Indian John
Mile Island
15
RIVER
GORDON
Trout
HERRICK
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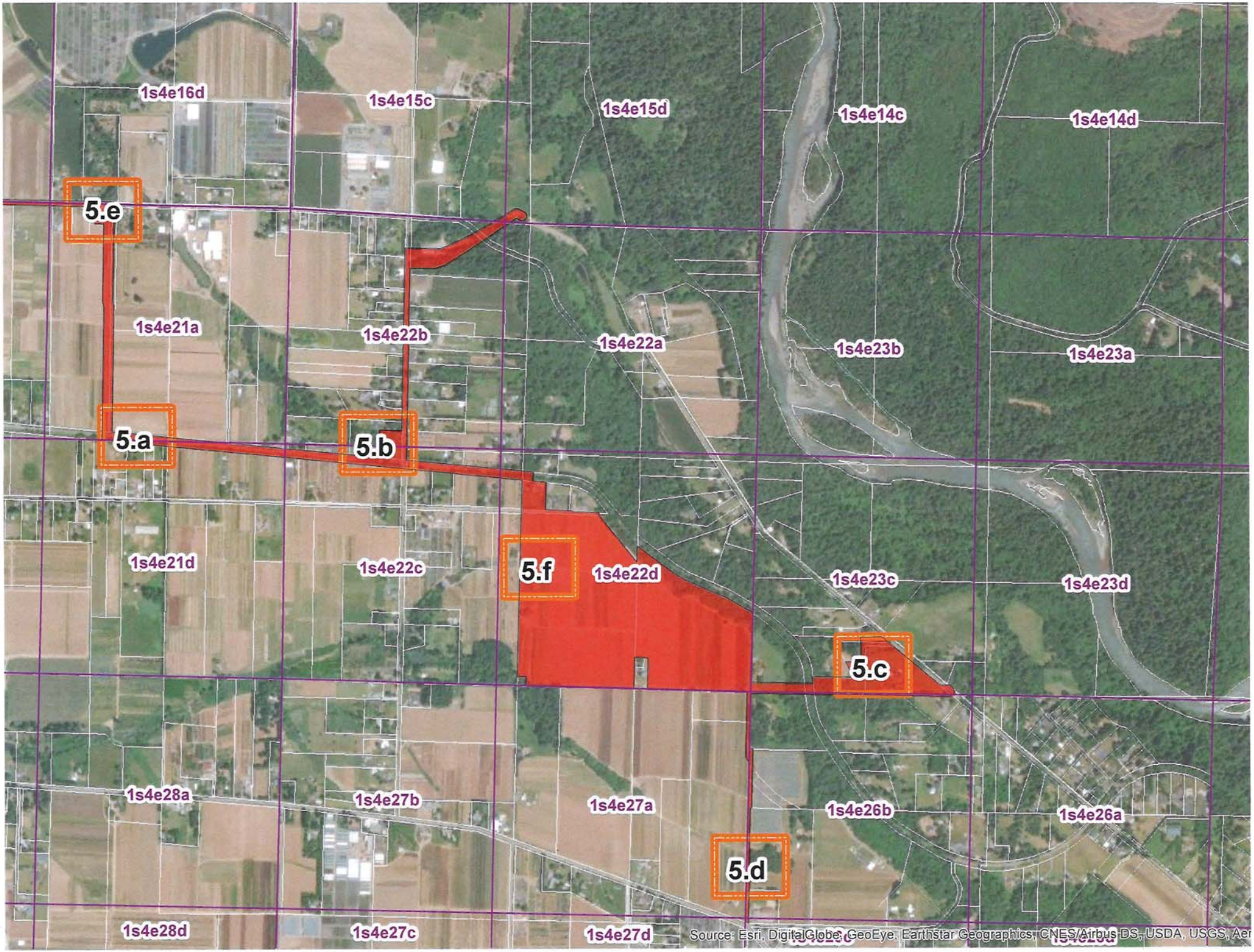
Copyright©


1s4e16d
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1s4e15d
1s4e14c
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5.e
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1s4e23b
1s4e23a
5.a
5.b
1s4e21d
1s4e22c
5.f
1s4e22d
1s4e23c
1s4e23d
5.c
1s4e28a
1s4e27b
1s4e27a
1s4e26b
1s4e26a
5.d
1s4e28d
1s4e27c
1s4e27d
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, Aer

WD2023-0085 Bull Run Filtration Project Tax Maps and Tax Lots (All Portions)

Multnomah County

01S04E15 801

01S04E16B, 01S04E16C, 01S04E16DC, ROW SE Altman Road and ROW SE Lusted Road

01S04E21A 900 and ROW SE Lusted Road and ROW SE Dodge Park Road

01S04E22BA 100 and 200

01S04E22BC 1300

01S04E22D 100 and 400

01S04E22DB 300

01S04E23C 800, 1400, 1500 and 2200

Clackamas County

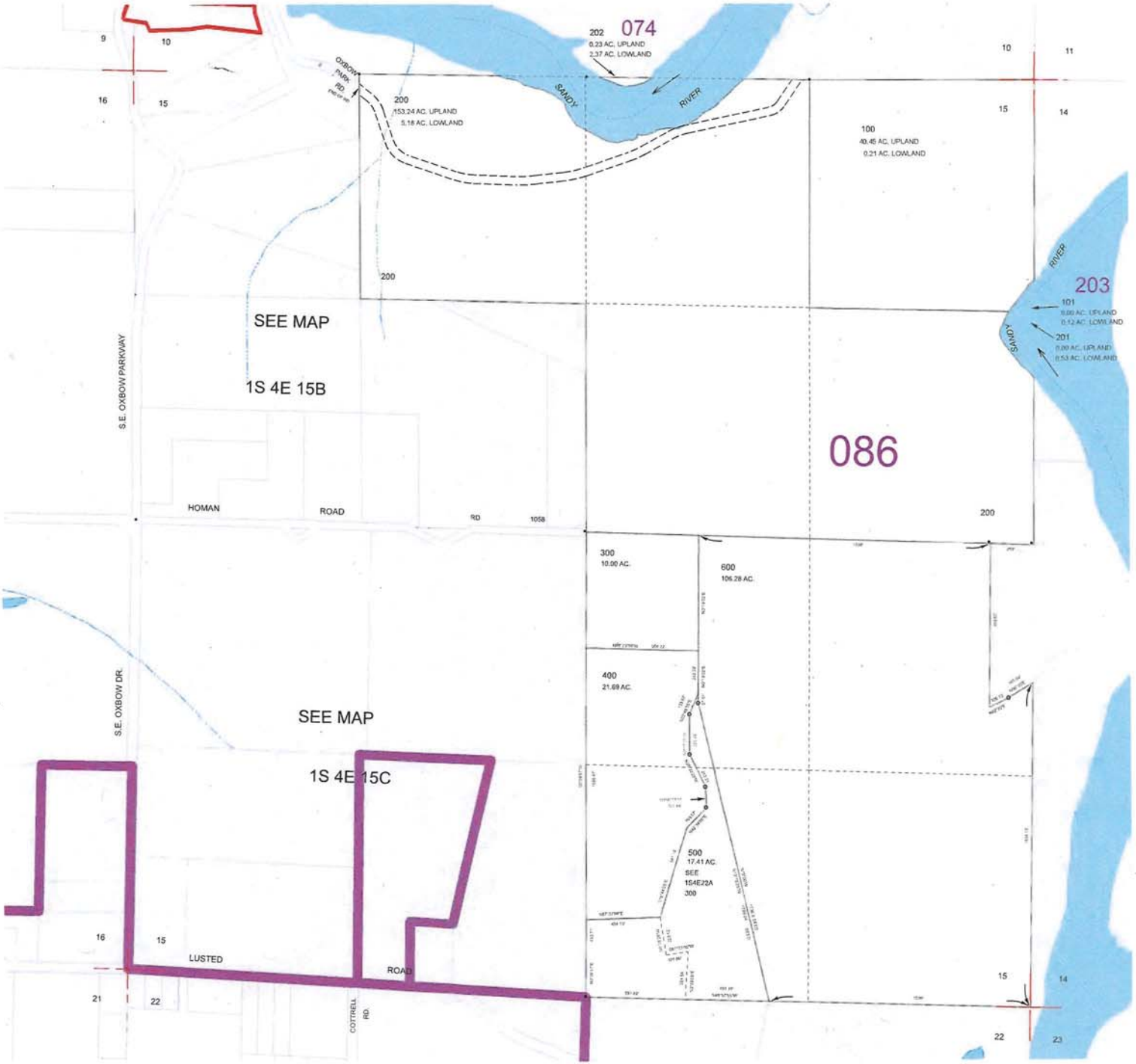
01S04E26 4800 and 5000

01S04E27 100 and 200

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SECTION 15 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 400'

1S 4E 15



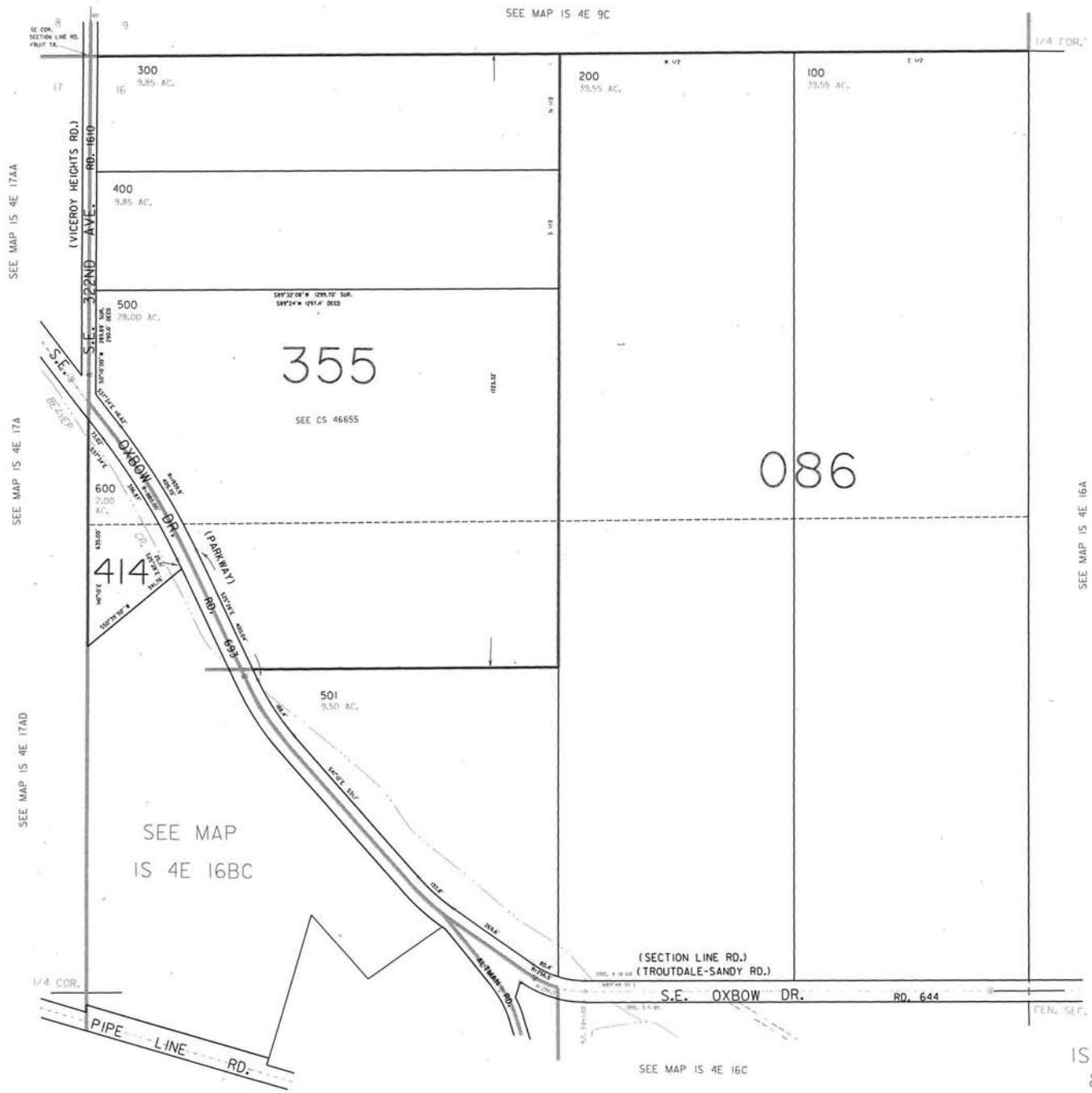
1S 4E 15

8/3/2016

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

NW1/4 SEC. 16 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 200'

1S 4E 16B & INDEX

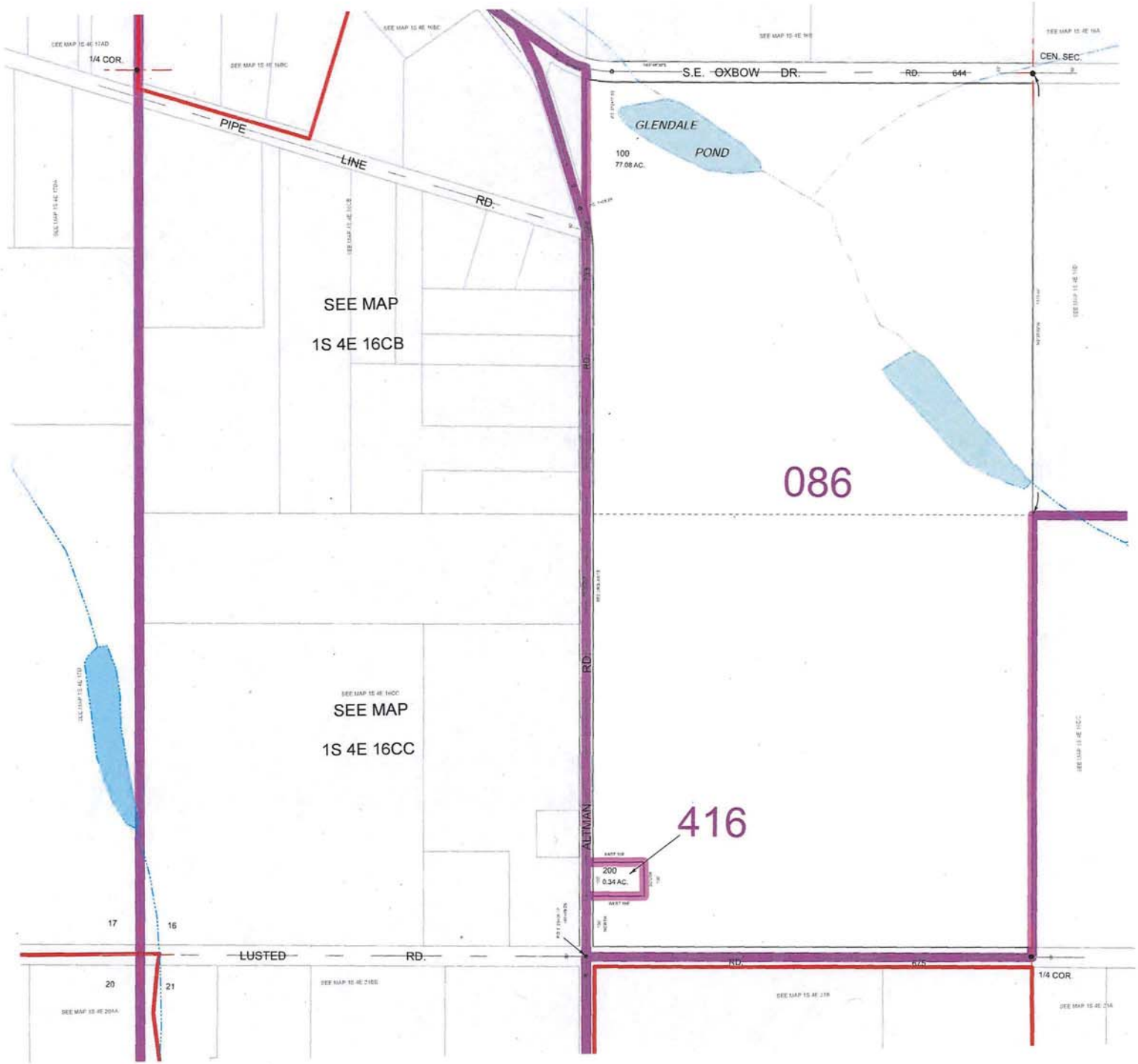


1S 4E 16B & INDEX

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

S.W.1/4 SEC.16 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 200'

1S 4E 16C



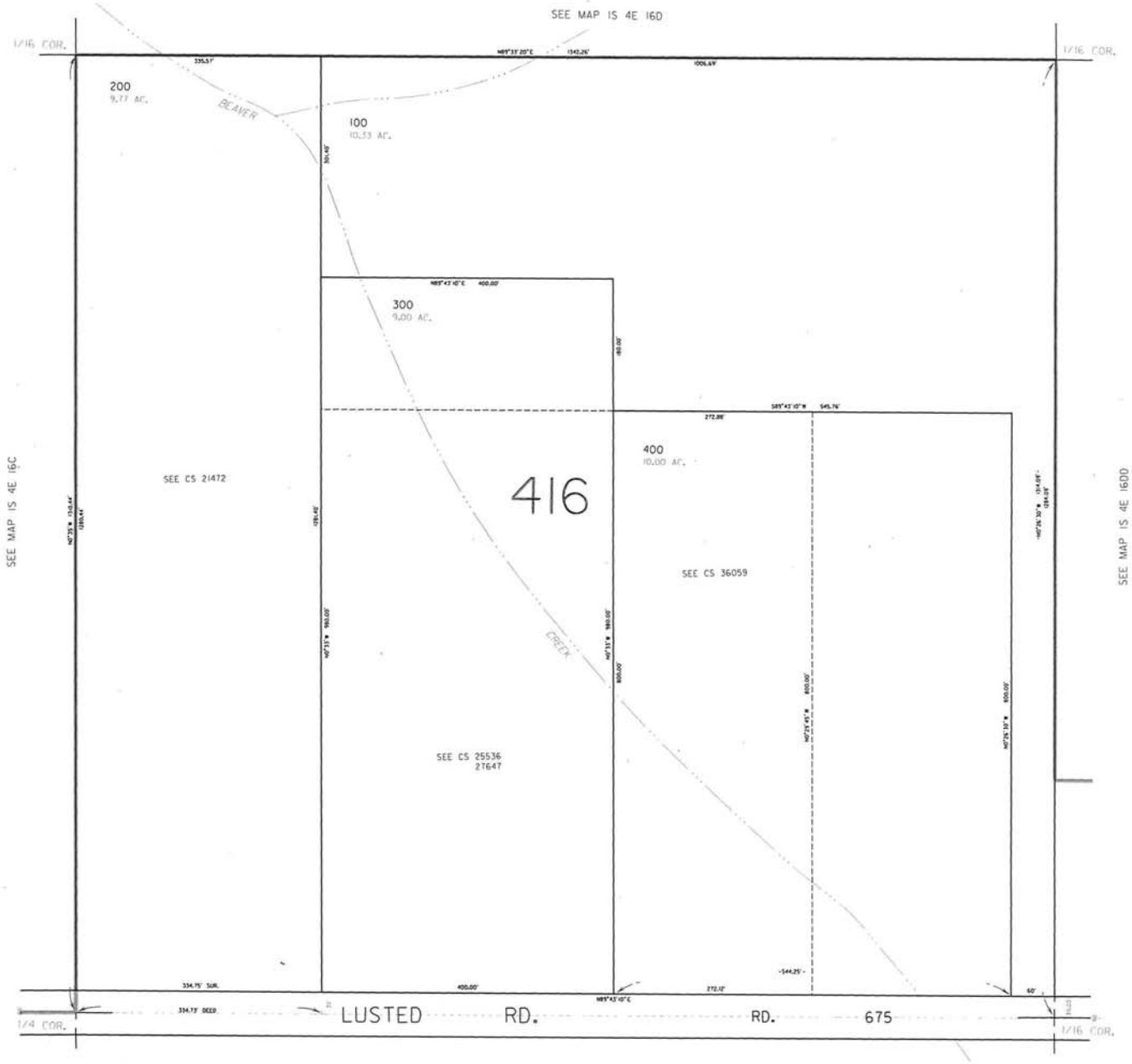
1S 4E 16C

8/3/2016

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SW1/4 SE1/4 SEC. 16 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 100'

IS 4E 16DC



SEE MAP IS 4E 21A

IS 4E 16DC

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

N.E.1/4 SEC.21 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 200'

1S 4E 21A

1S 4E 21A

8/3/2016

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

N.E.1/4 N.W.1/4 SEC.22 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 100'

1S 4E 22BA

1S 4E 22BA

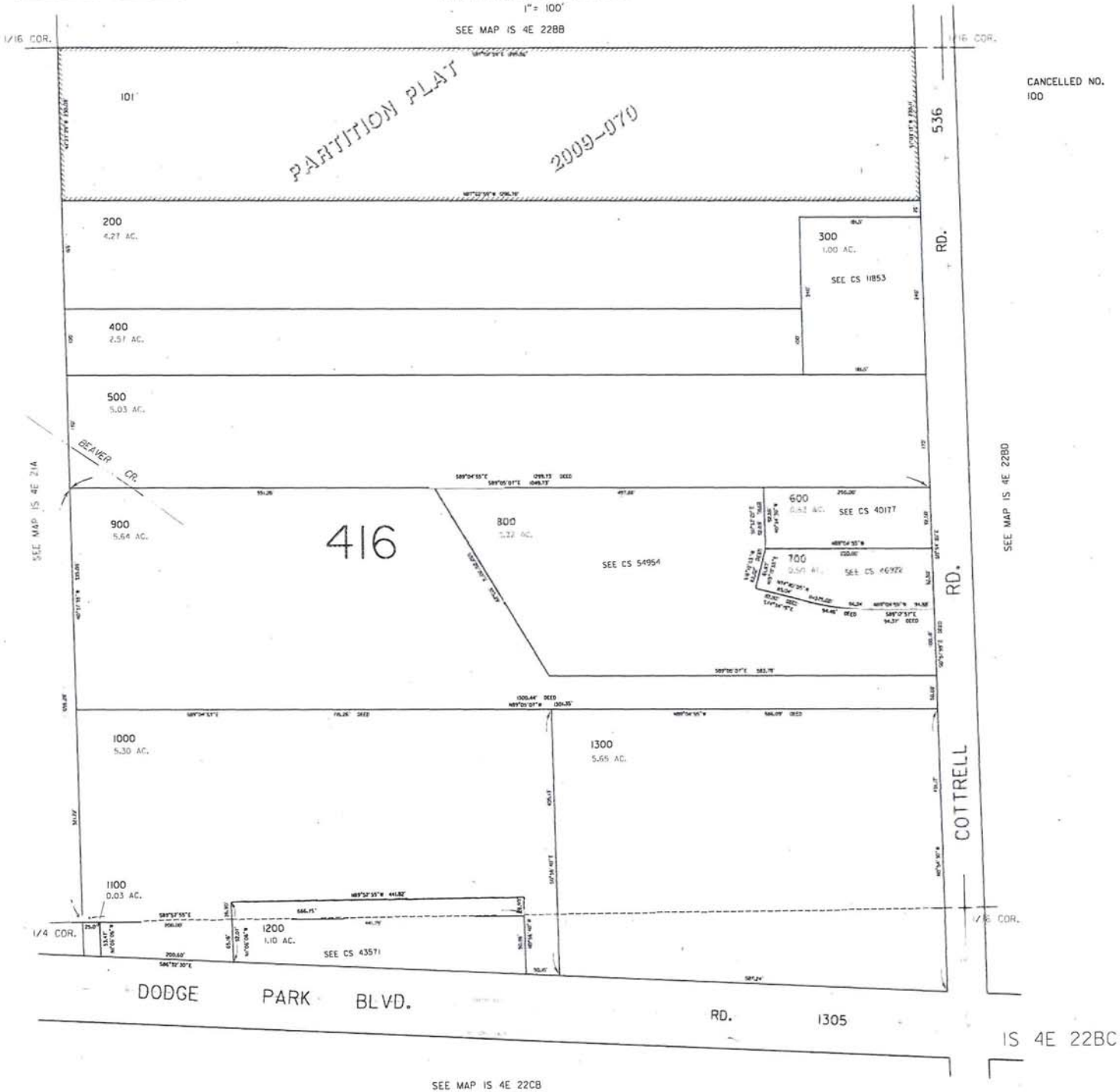
8/3/2016

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SW1/4 NW1/4 SEC. 22 T.1S. R.4E. W.M.
MULTNOMAH COUNTY

1" = 100'

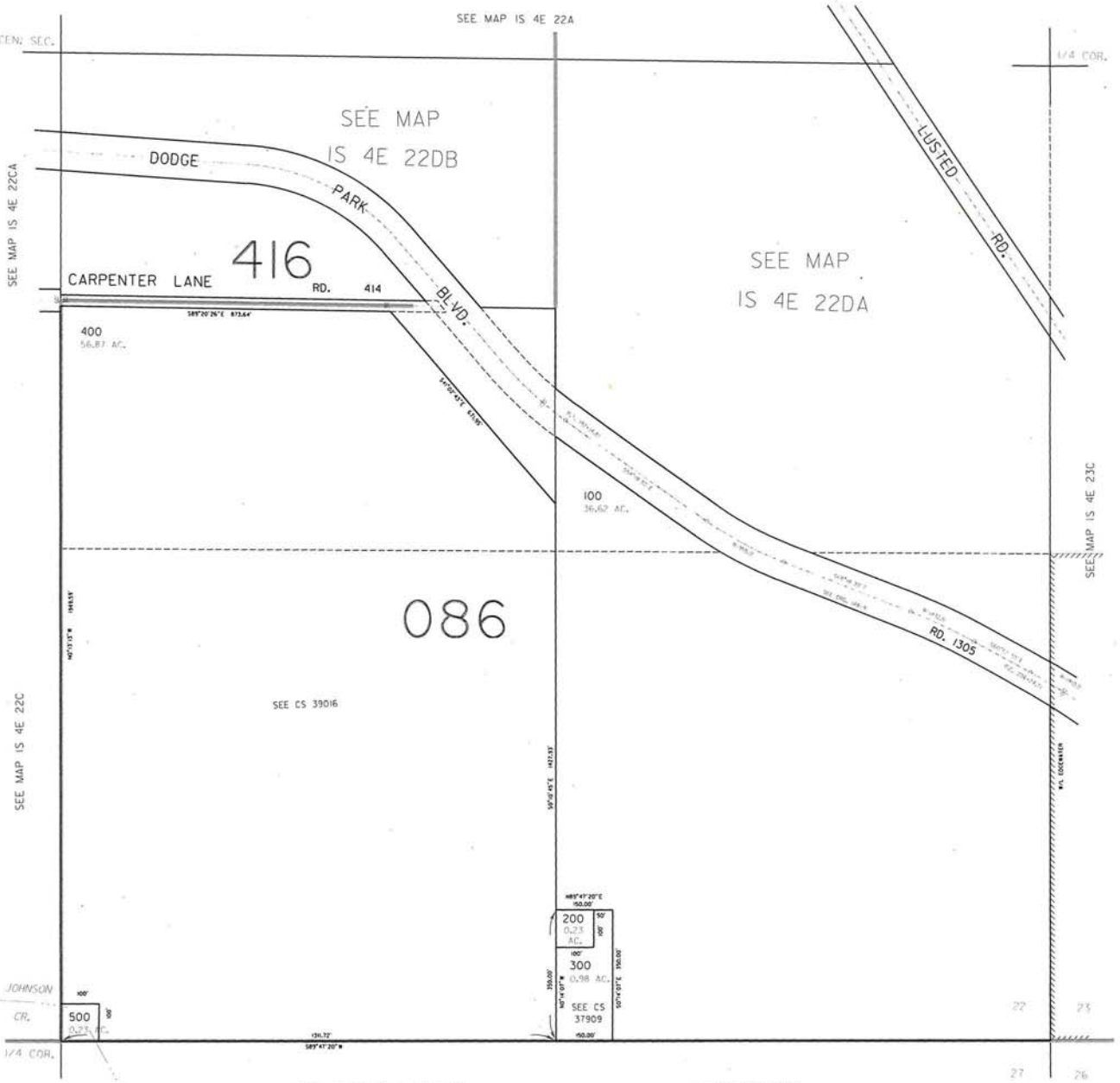
IS 4E 22BC



THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SE1/4 SEC. 22 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 200'

1S 4E 22D & INDEX



1S 4E 22D & INDEX

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

NW1/4 SE1/4 SEC. 22 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 100'

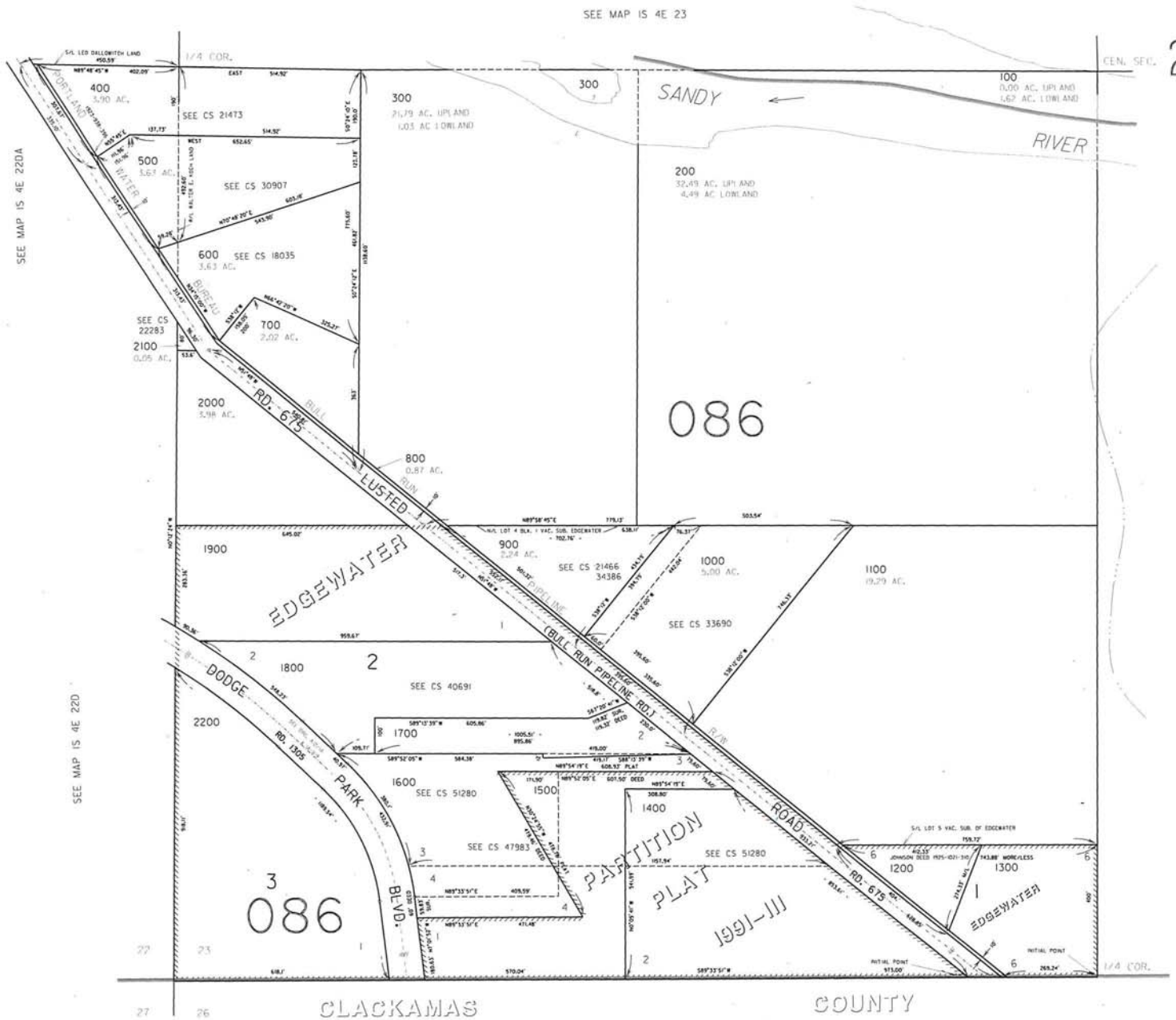
1S 4E 22DB

1S 4E 22DB

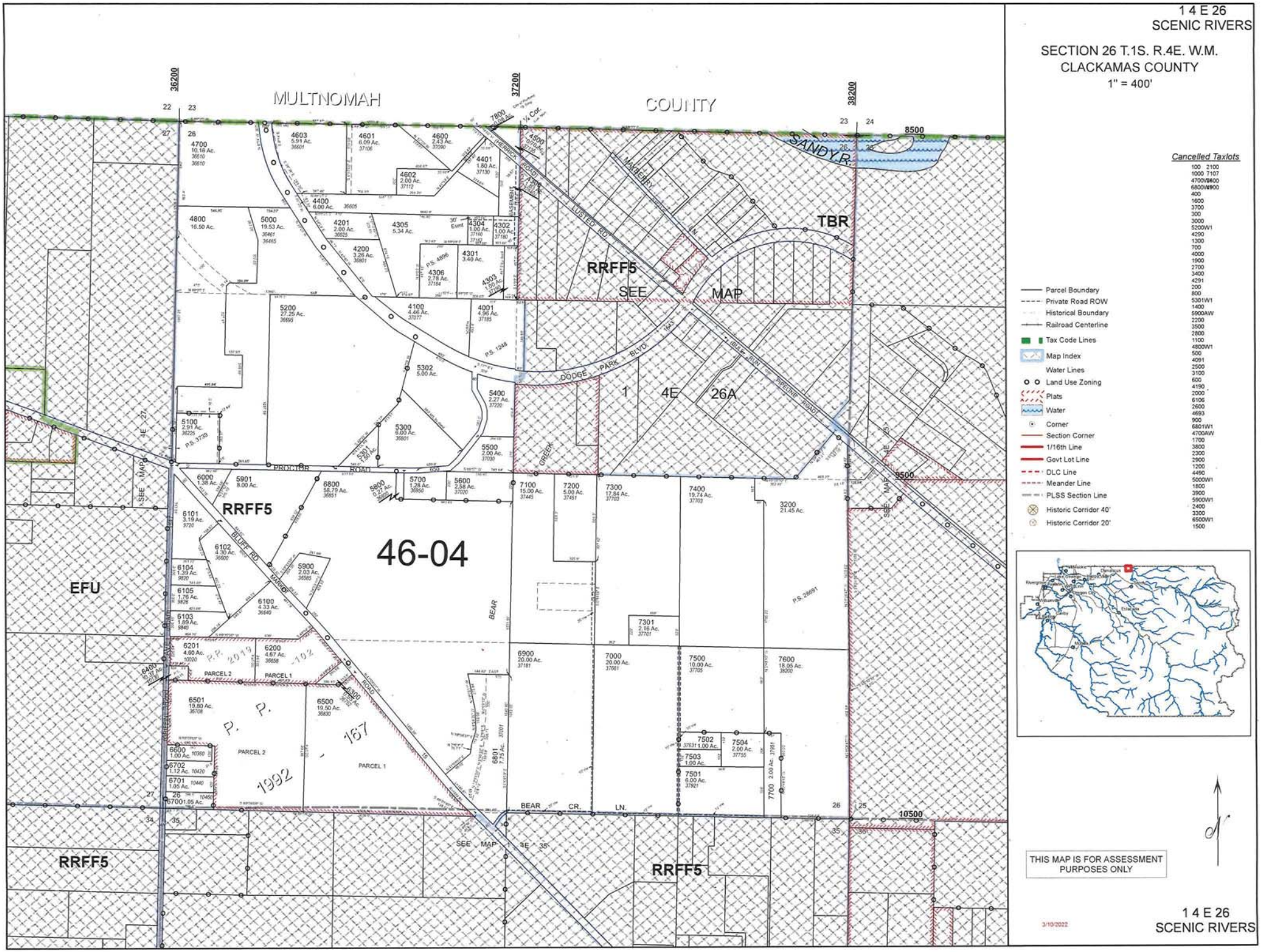
THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SW1/4 SEC. 23 T.1S. R.4E. W.M.
MULTNOMAH COUNTY
1" = 200'

IS 4E 23C



IS 4E 23C


1 4 E 26
SCENIC RIVERS
SECTION 26 T.1S. R.4E. W.M.
CLACKAMAS COUNTY
1" = 400'
MULTNOMAH
COUNTY
SANDY R.
TBR
RRFF5
EFU
46-04
SEE MAP 1 4E 26A
SEE MAP 1 4E 27
SEE MAP 1 4E 35
DODGE PARK BLVD
PROCTOR ROAD
BLUFF RD
BEAR CR. LN.
LUSTED RD
MAPLEHAY LN.
GREEN
PARCEL 1
PARCEL 2
P. P. 1992 - 167
P. P. 2019 - 102
Cancelled Taxlots
100 2100
1000 7107
4700W1 9400
6800W1 900
400
1600
3700
300
3000
5200W1
4290
1300
700
4000
1900
2700
3400
4291
200
800
5301W1
1400
5900AW
2200
3500
2800
1100
4800W1
500
4091
2500
3100
600
4190
2000
6106
2600
4693
900
6801W1
4700AW
1700
3800
2300
2900
1200
4490
5000W1
1800
3900
5900W1
2400
3300
6500W1
1500
Parcel Boundary
Private Road ROW
Historical Boundary
Railroad Centerline
Tax Code Lines
Map Index
Water Lines
Land Use Zoning
Plats
Water
Corner
Section Corner
1/16th Line
Govt Lot Line
DLC Line
Meander Line
PLSS Section Line
Historic Corridor 40'
Historic Corridor 20'
THIS MAP IS FOR ASSESSMENT PURPOSES ONLY
3/10/2022
1 4 E 26
SCENIC RIVERS

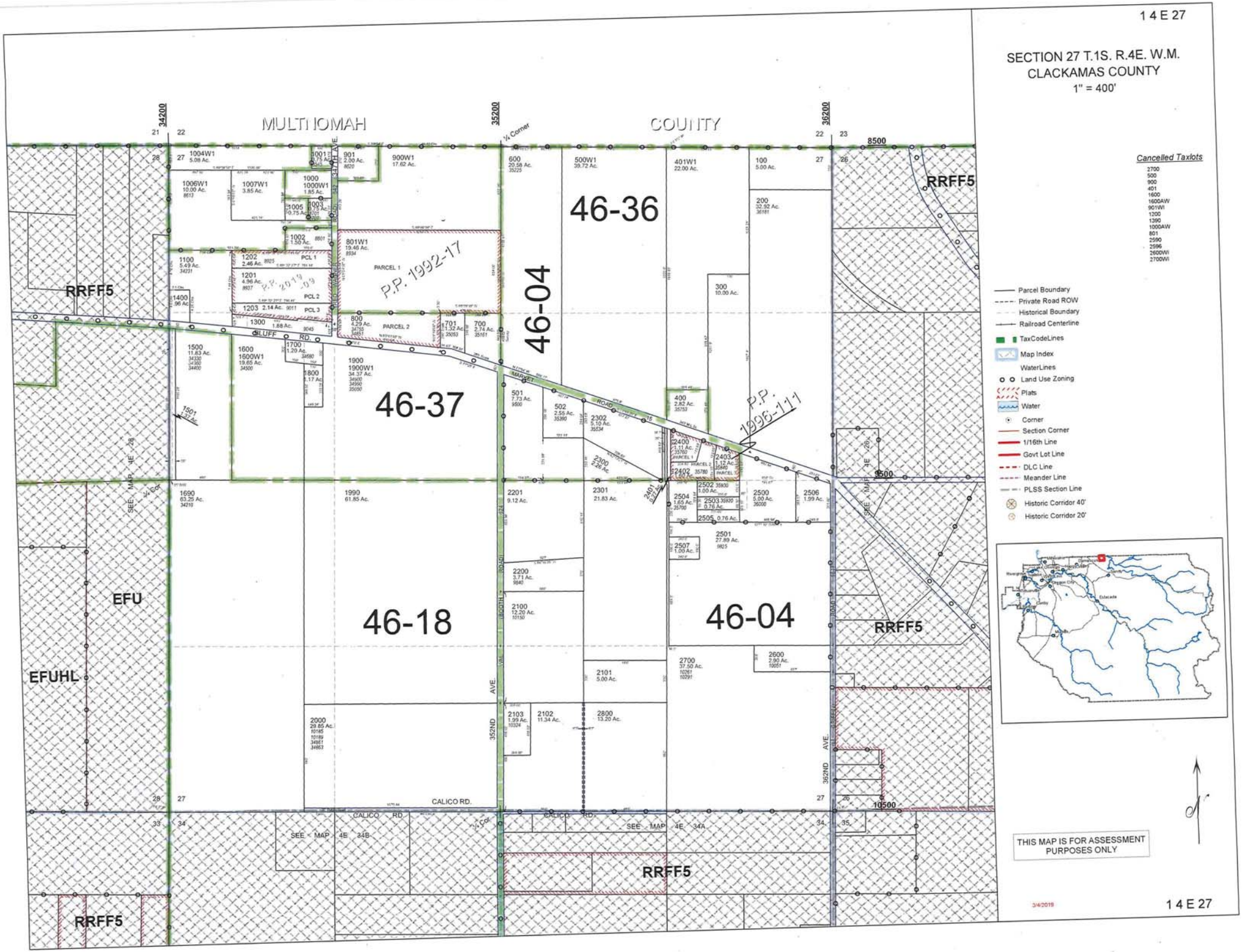
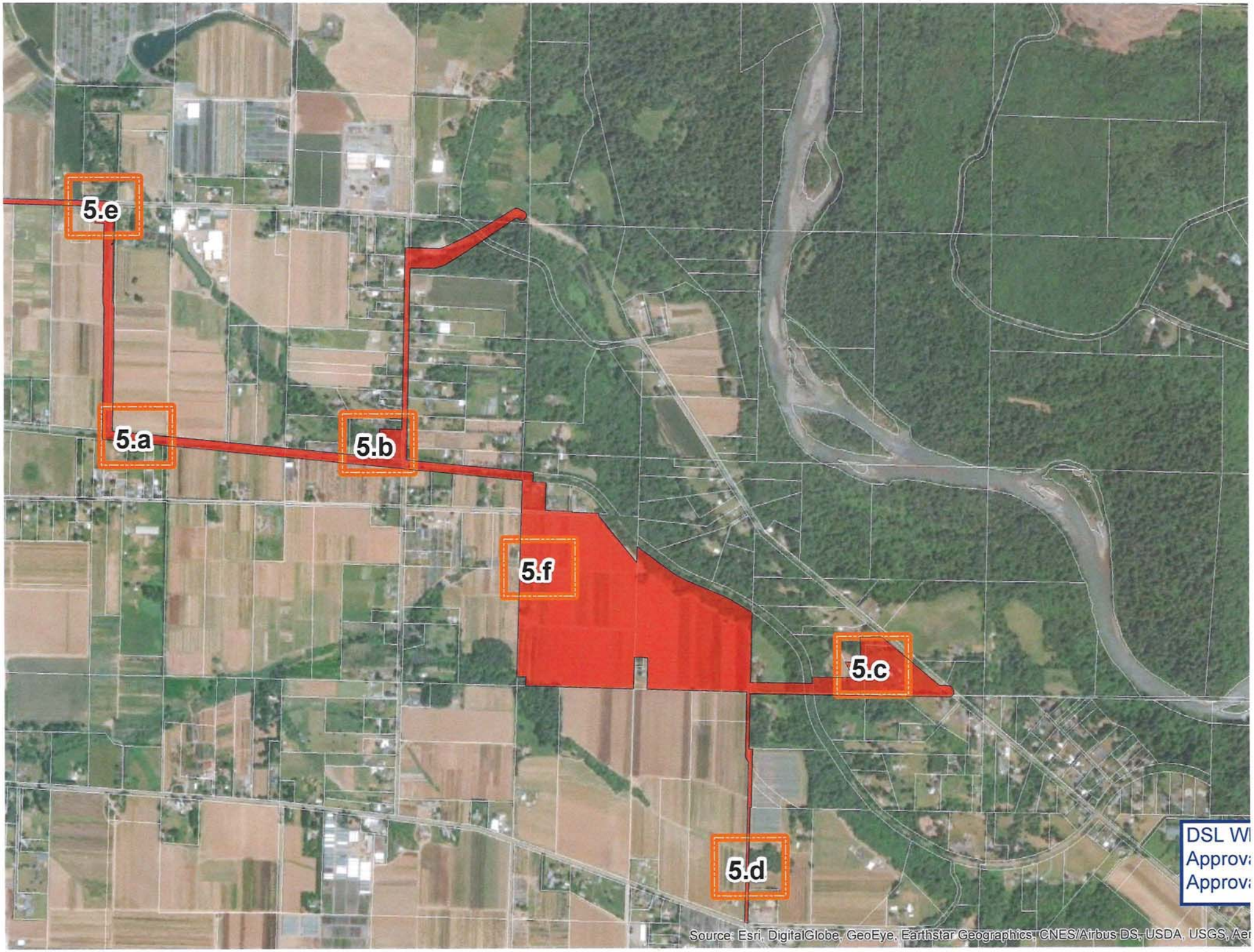
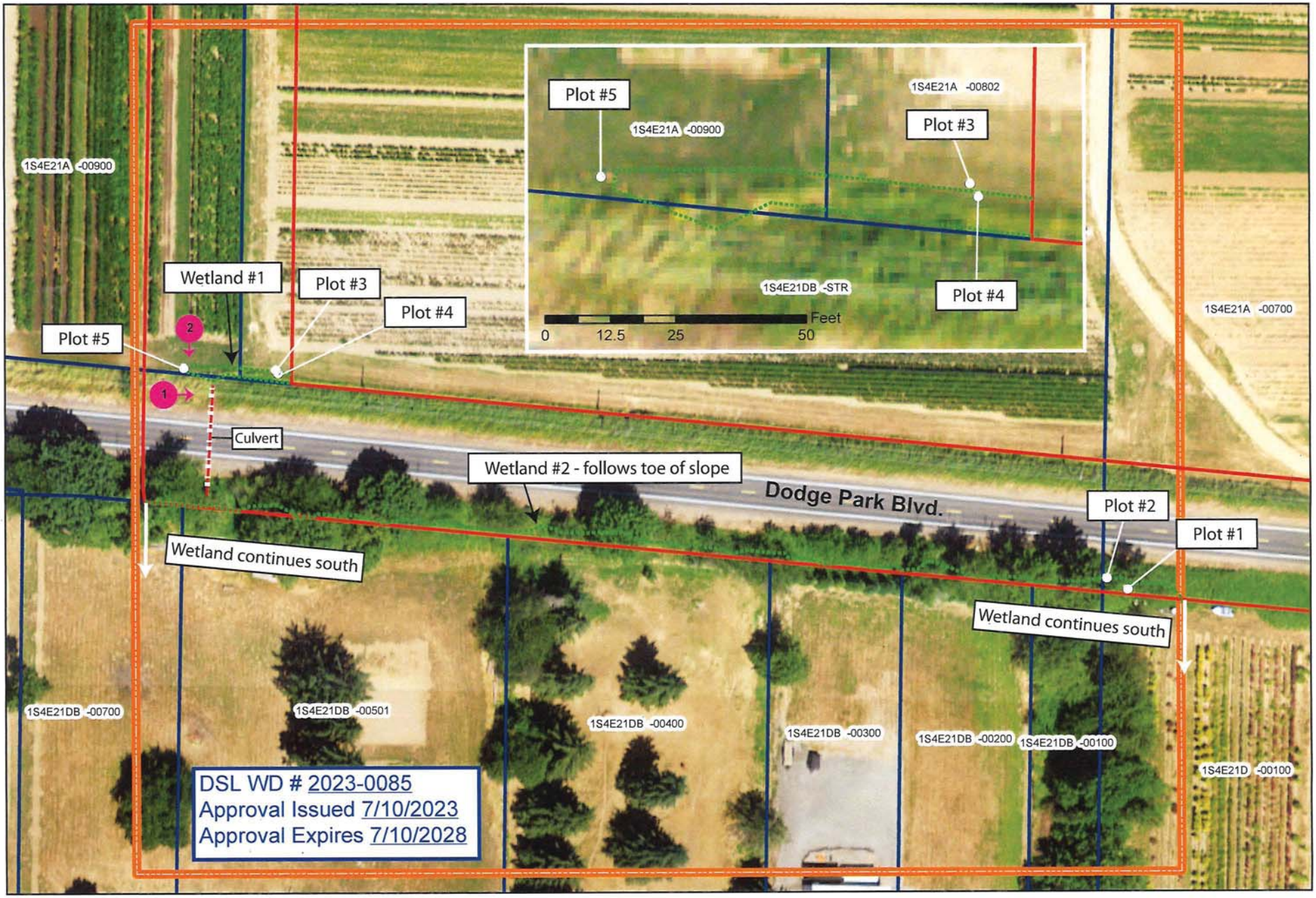

14E27
SECTION 27 T.1S. R.4E. W.M.
CLACKAMAS COUNTY
1" = 400'
MULTNOMAH
COUNTY
46-36
46-04
46-37
46-18
46-04
RRFF5
EFU
EFUHL
P.P. 1992-17
P.P. 2013-013
P.P. 1996-111
BLUFF RD.
MARKET ROAD 18
CALICO RD.
SEE MAP 4E 34B
SEE MAP 4E 34A
SEE MAP 4E 28
SEE MAP 4E 26
Cancelled Taxlots
2700
500
900
401
1600
1600AW
901WI
1200
1390
1000AW
801
2590
2596
2600WI
2700WI
Parcel Boundary
Private Road ROW
Historical Boundary
Railroad Centerline
TaxCodeLines
Map Index
WaterLines
Land Use Zoning
Plats
Water
Corner
Section Corner
1/16th Line
Govt Lot Line
DLC Line
Meander Line
PLSS Section Line
Historic Corridor 40'
Historic Corridor 20'
THIS MAP IS FOR ASSESSMENT PURPOSES ONLY
3/4/2019
14E27

Table 5. Potentially Jurisdictional Resources

Feature	Area (sf)	Area (acres)	Cowardin Classification	HGM Classification
Wetland 1: Dodge Park Blvd north	567	0.013	PEMA	Slope Valley
Wetland 2: Dodge Park Blvd south	4,003	0.092	PEMB	Slope Valley
Wetland 3: Pond (Water 2) margin	4,654	0.107	PEMB	Riverine Flow-Through
Wetland 4: Stream (Water 3) margin	2,825	0.065	PEMB	Slope Valley
Wetland 5: Swale trib below Water 3	6,004	0.138	PEMB	Slope Valley
Wetland 6: Swale trib below Wetland 5	1,127	0.026	PEMB	Slope Valley
TOTAL	**19,180 s.f.**	**0.44 ac.**		
Water 1: Beaver Creek trib @ Cottrell	2,884	0.066	R3UB1	Riverine Flow-Through
Water 2: Pond	1,910	0.043	R3UB3x	Riverine Flow-Through
Water 3: Stream/pond complex	4,797	0.110	R3UB3x	Riverine Flow-Through
Water 4: Farm road ditch	414	0.009	R4UB3x	Riverine Flow-Through
TOTAL	**10,005 s.f.**	**0.229 ac.**		


5.e
5.a
5.b
5.f
5.c
5.d
DSL W
Approv
Approv
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, Ae



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5a: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | # Photopoint & Direction of View

Key Map Area | Wetland Boundary

Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl

Bull Run TREATMENT PROJECTS **Filtration**

Figure 5b: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | # Photopoint & Direction of View

Key Map Area | Wetland Boundary | Direction of Flow (white)

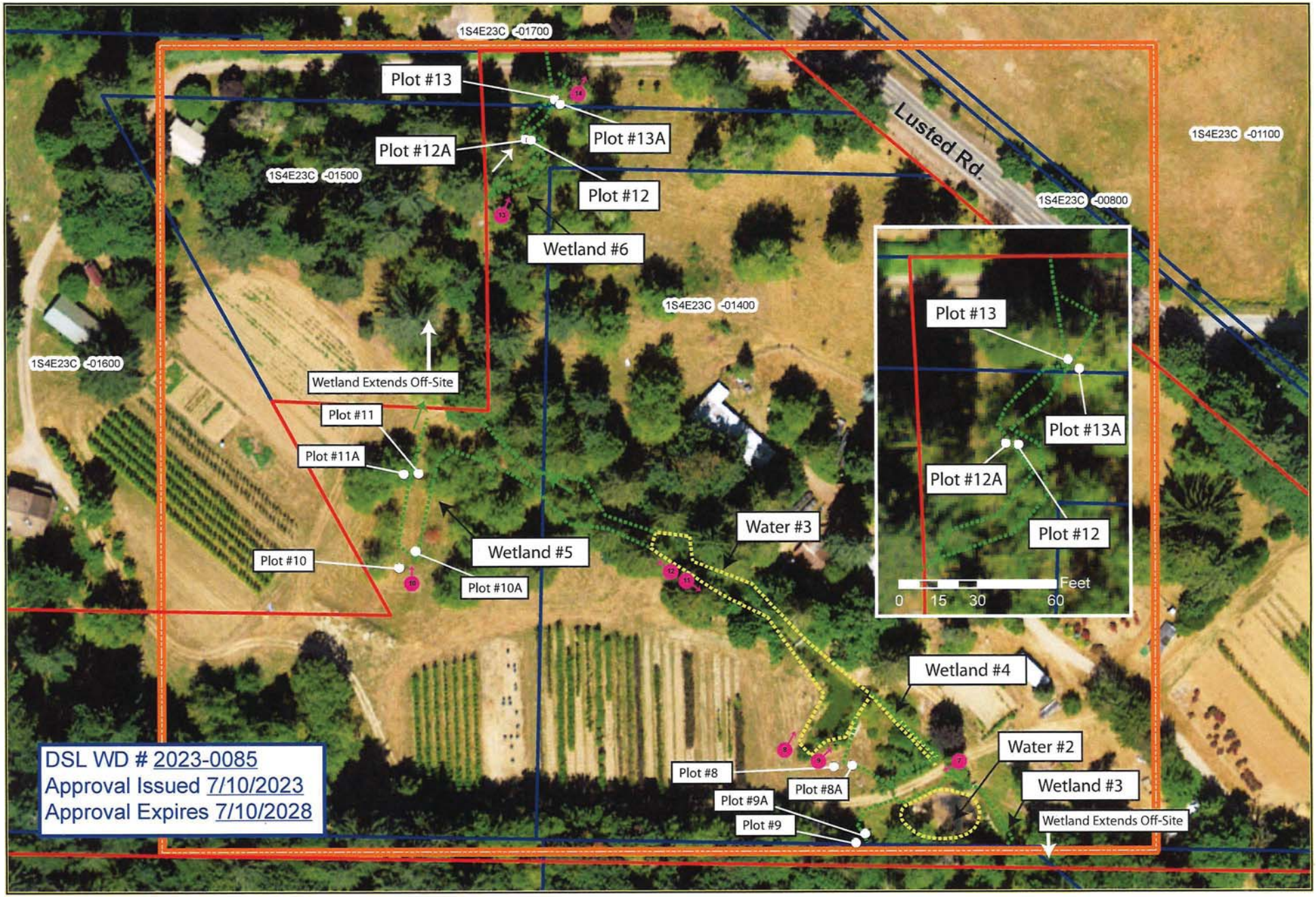
Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

N

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5c: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | # Photopoint & Direction of View

Key Map Area | Wetland Boundary | Ordinary High Water Line | Direction of Flow (White)

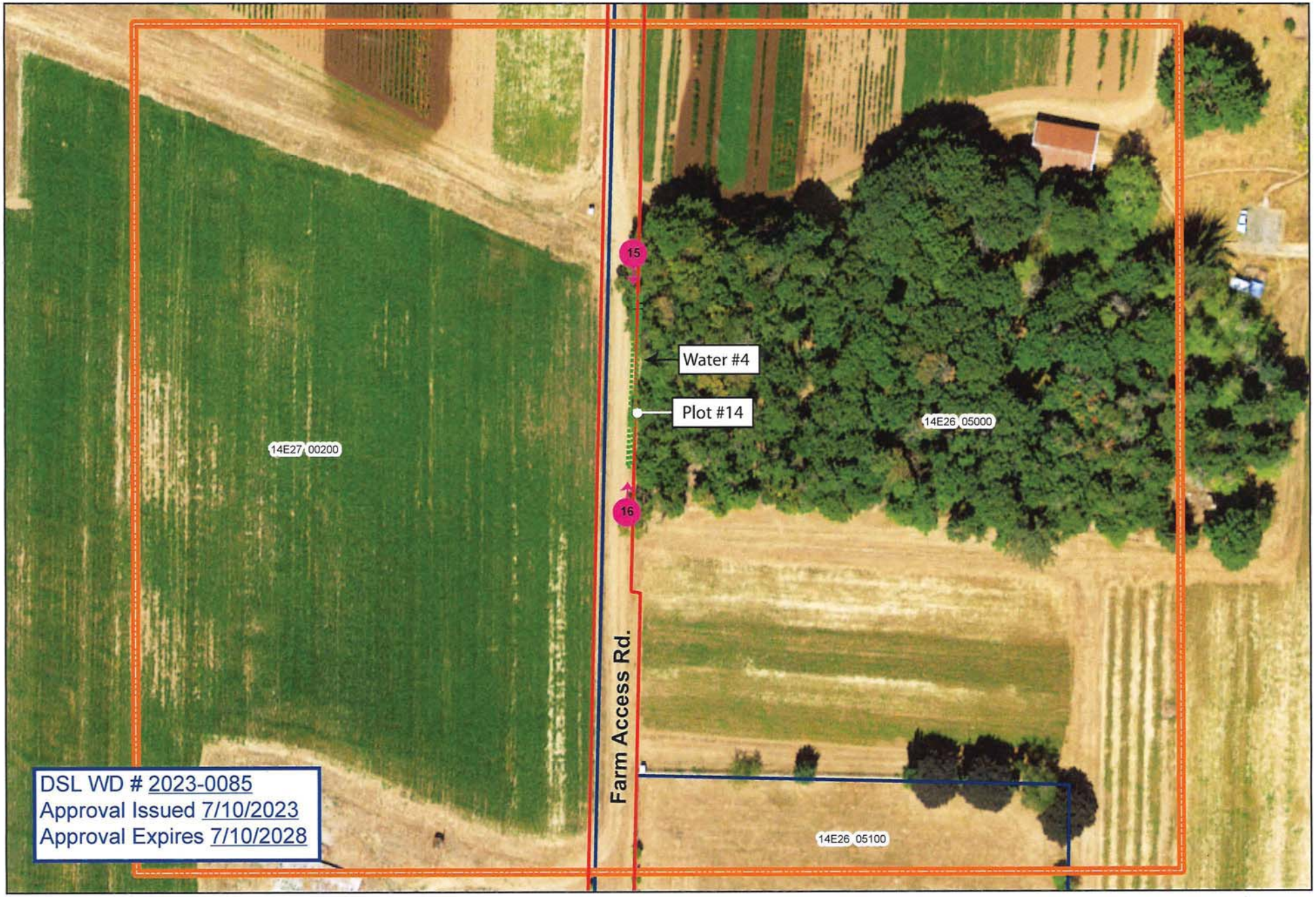
Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 105.35 feet

0 30 60 120 Feet

N

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5d: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | # Photopoint & Direction of View

Key Map Area | Wetland Boundary

Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

N

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl

Bull Run TREATMENT PROJECTS **Filtration**

Figure 5e: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | Key Map Area | # Photopoint & Direction of View

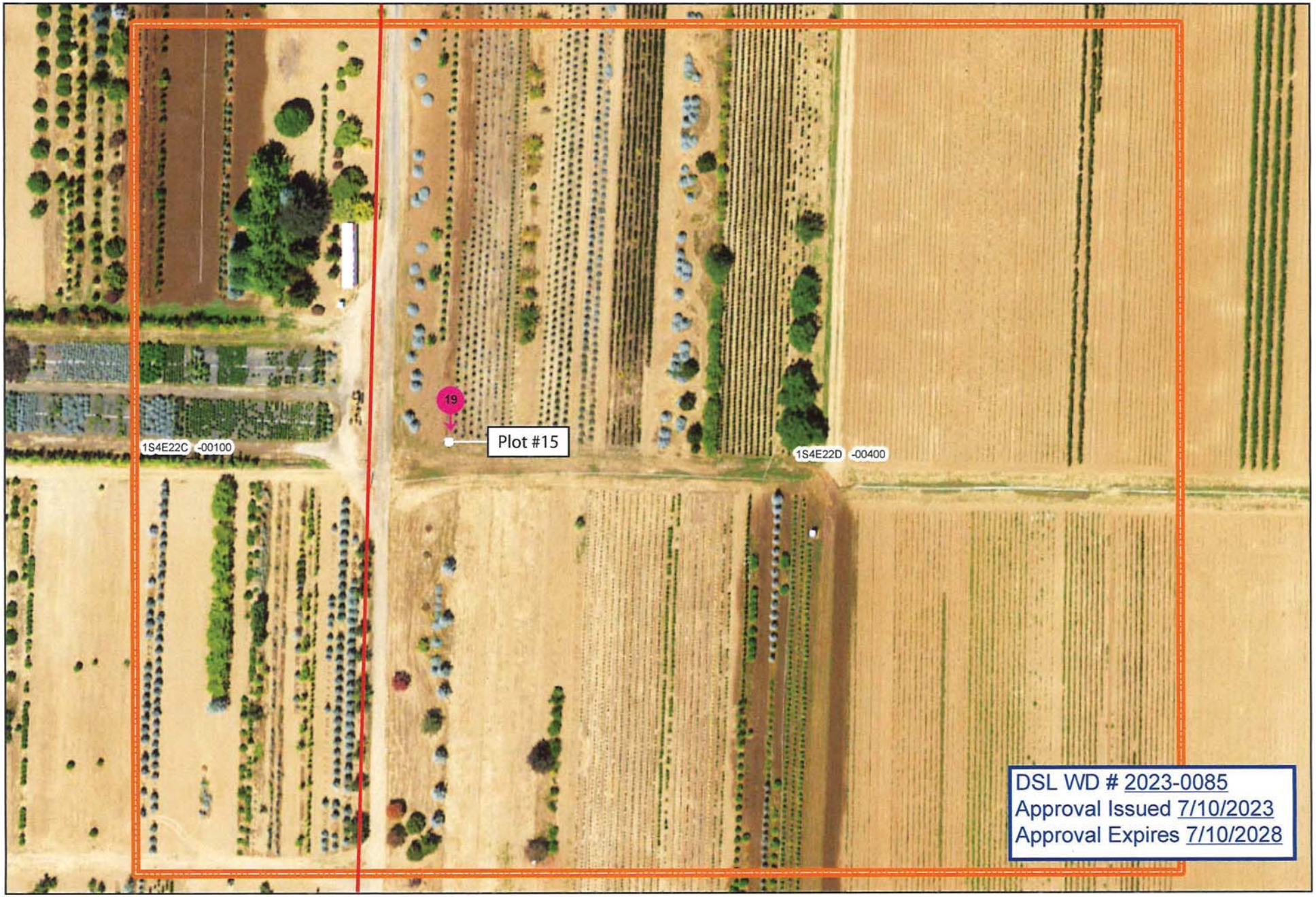
Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

N

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5f: Potentially Jurisdictional Resources Map

Study Area | Tax Lots | Key Map Area | # Photopoint & Direction of View

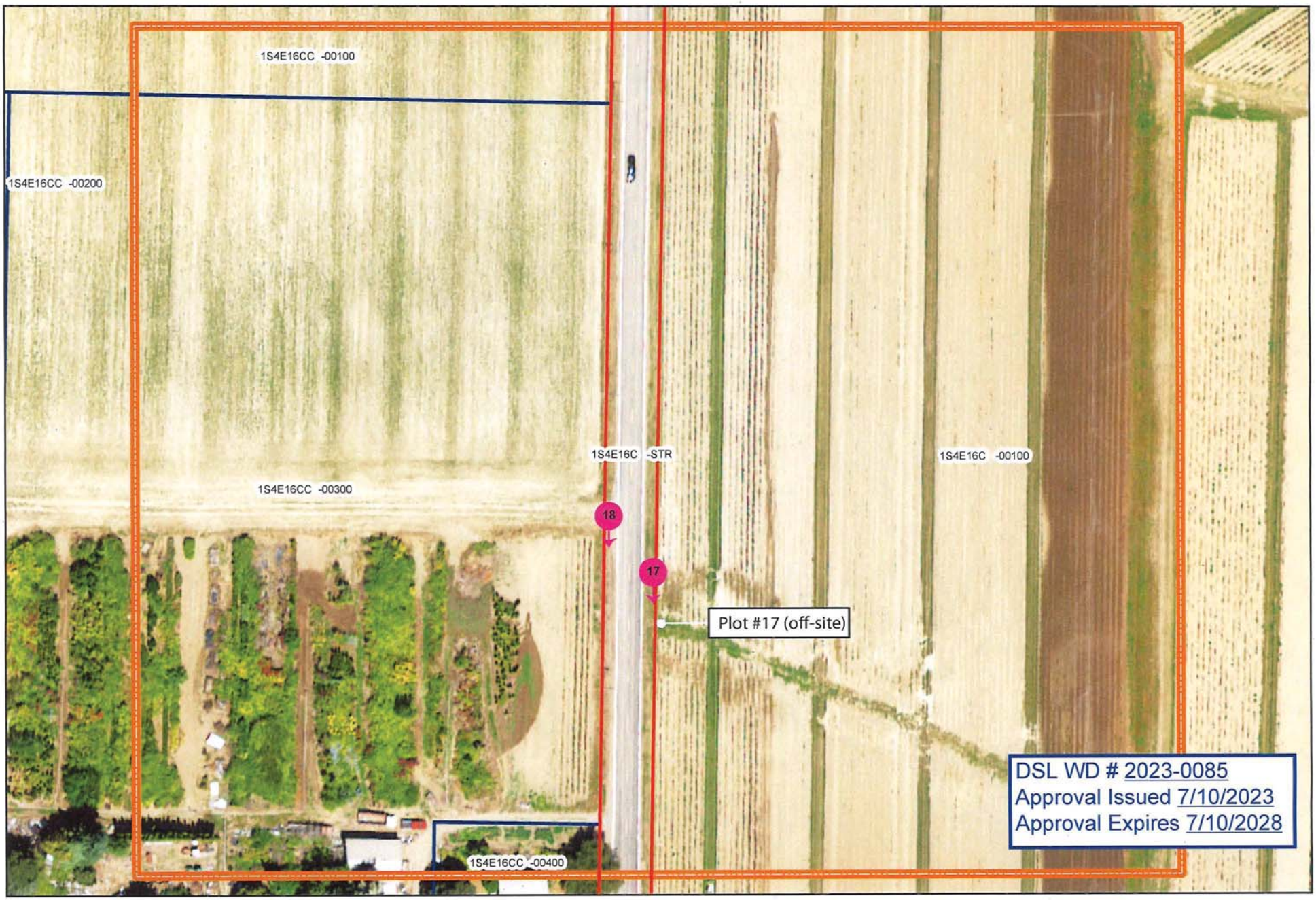
Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

N

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl



Bull Run TREATMENT PROJECTS **Filtration**

Figure 5g: Potentially Jurisdictional Resources Map

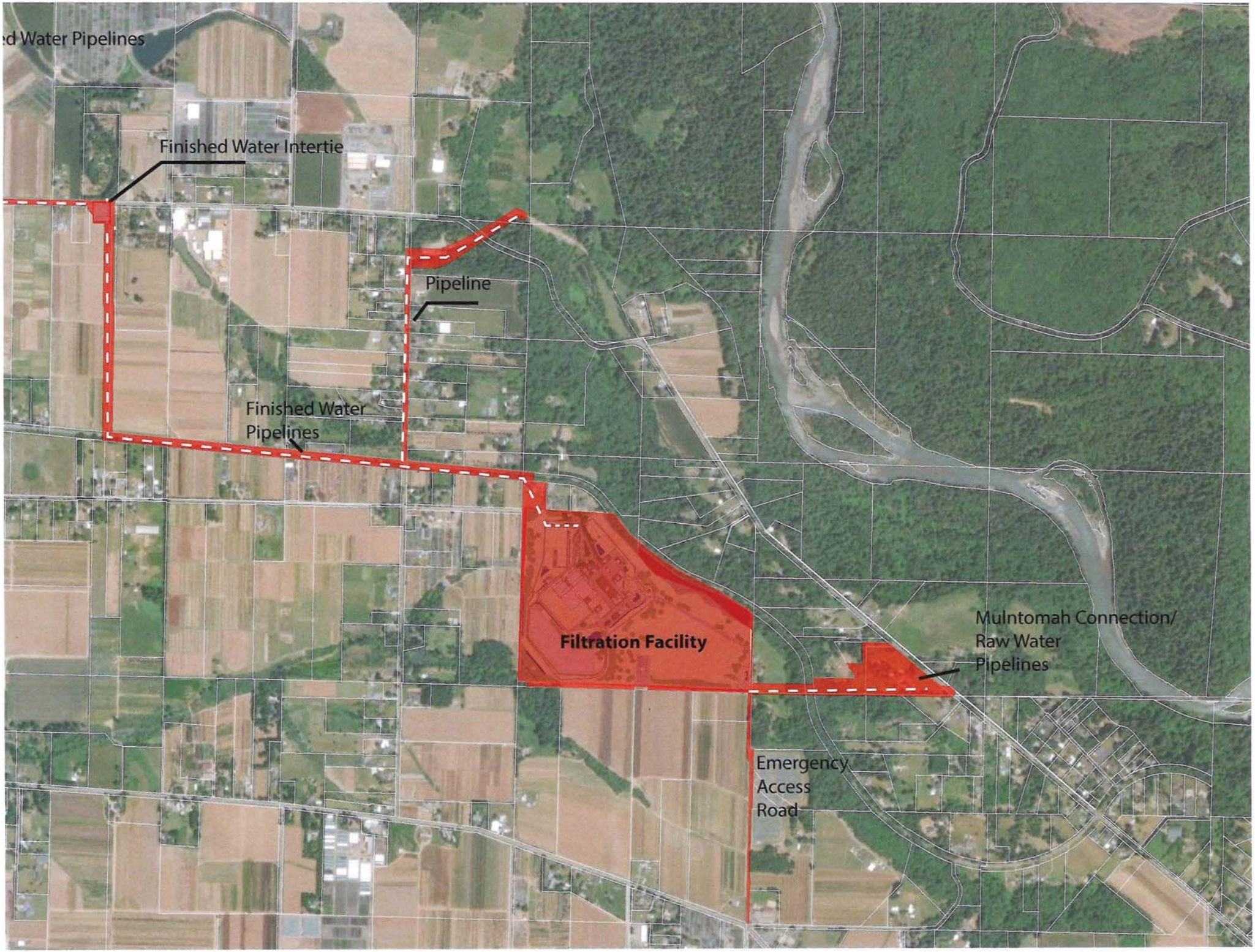
Study Area | Tax Lots | Key Map Area | # Photopoint & Direction of View

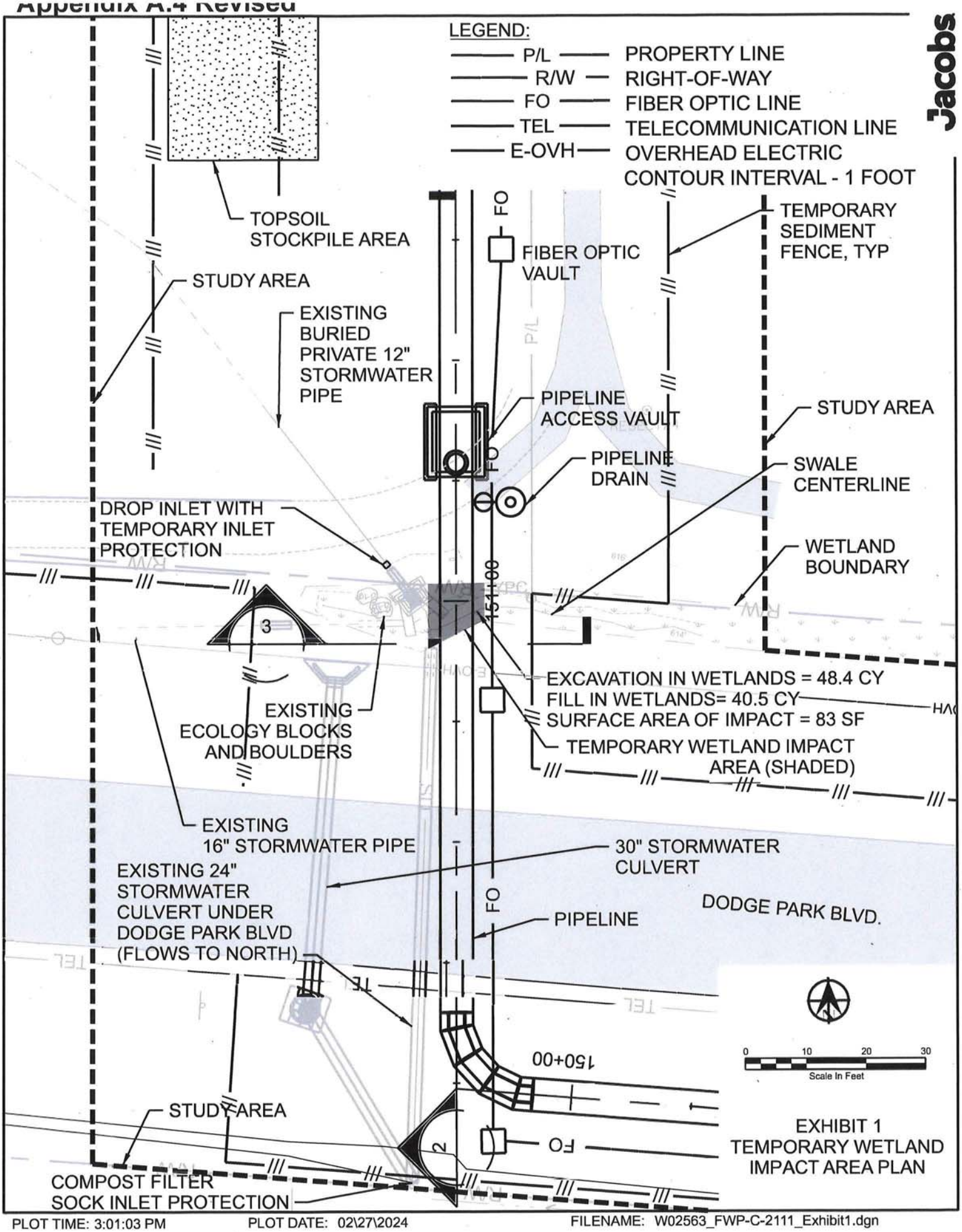
Plot 17 was located via aerial photography and is accurate to +/-5 feet.

1 inch = 100 feet

0 25 50 100 Feet

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl


ed Water Pipelines
Finished Water Intertie
Pipeline
Finished Water Pipelines
Filtration Facility
Mulntomah Connection/ Raw Water Pipelines
Emergency Access Road



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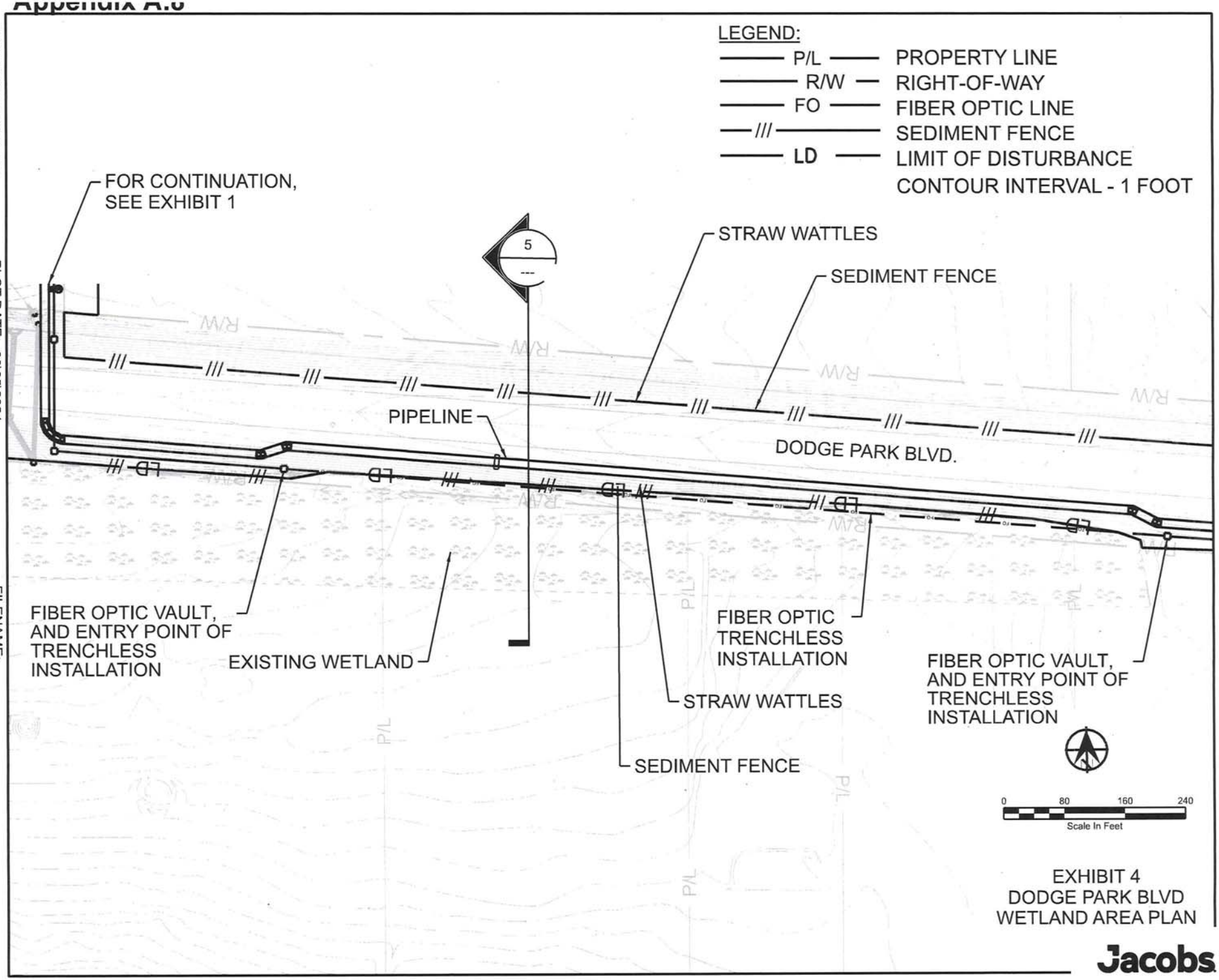


EXHIBIT 4
DODGE PARK BLVD
WETLAND AREA PLAN

Jacobs

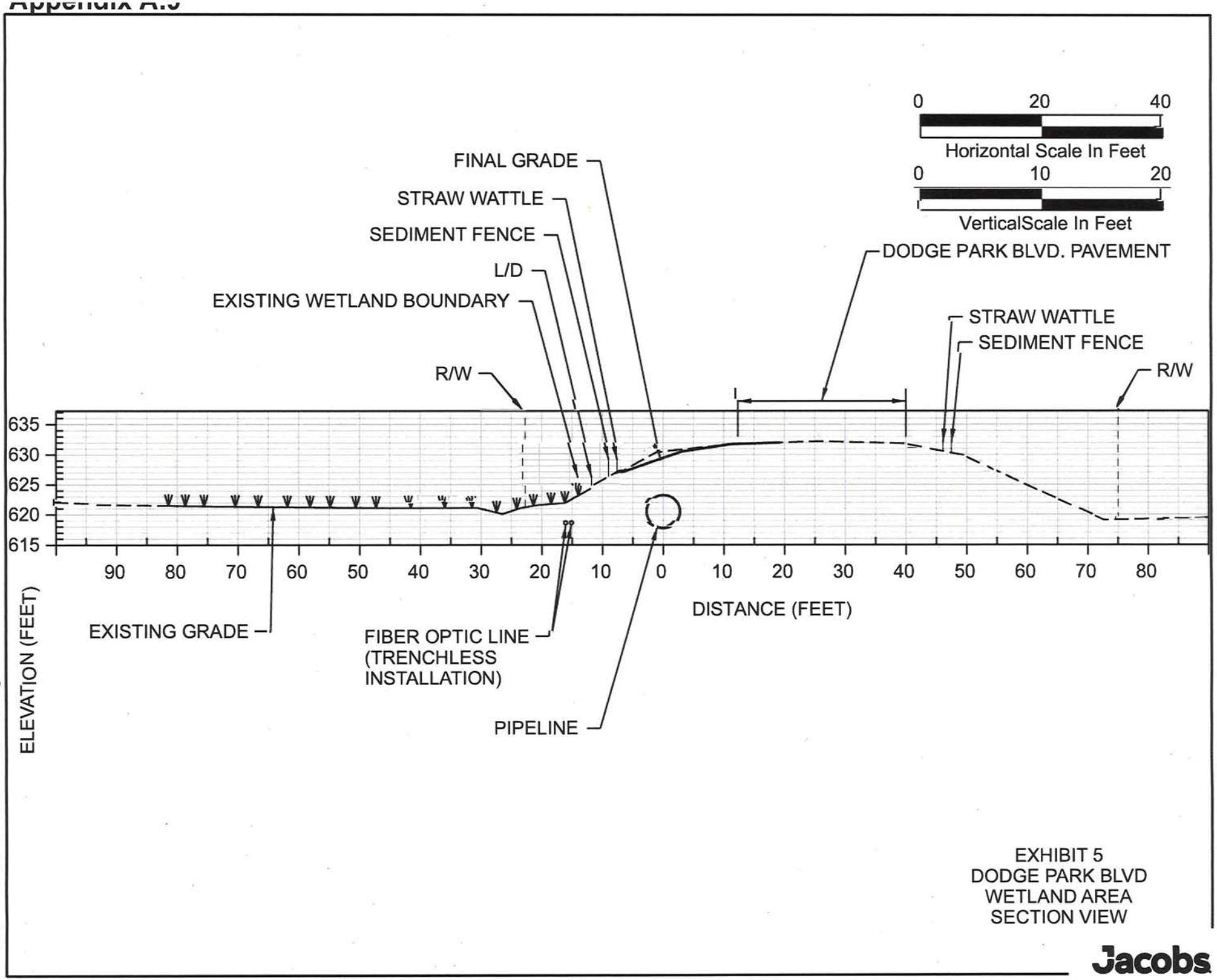
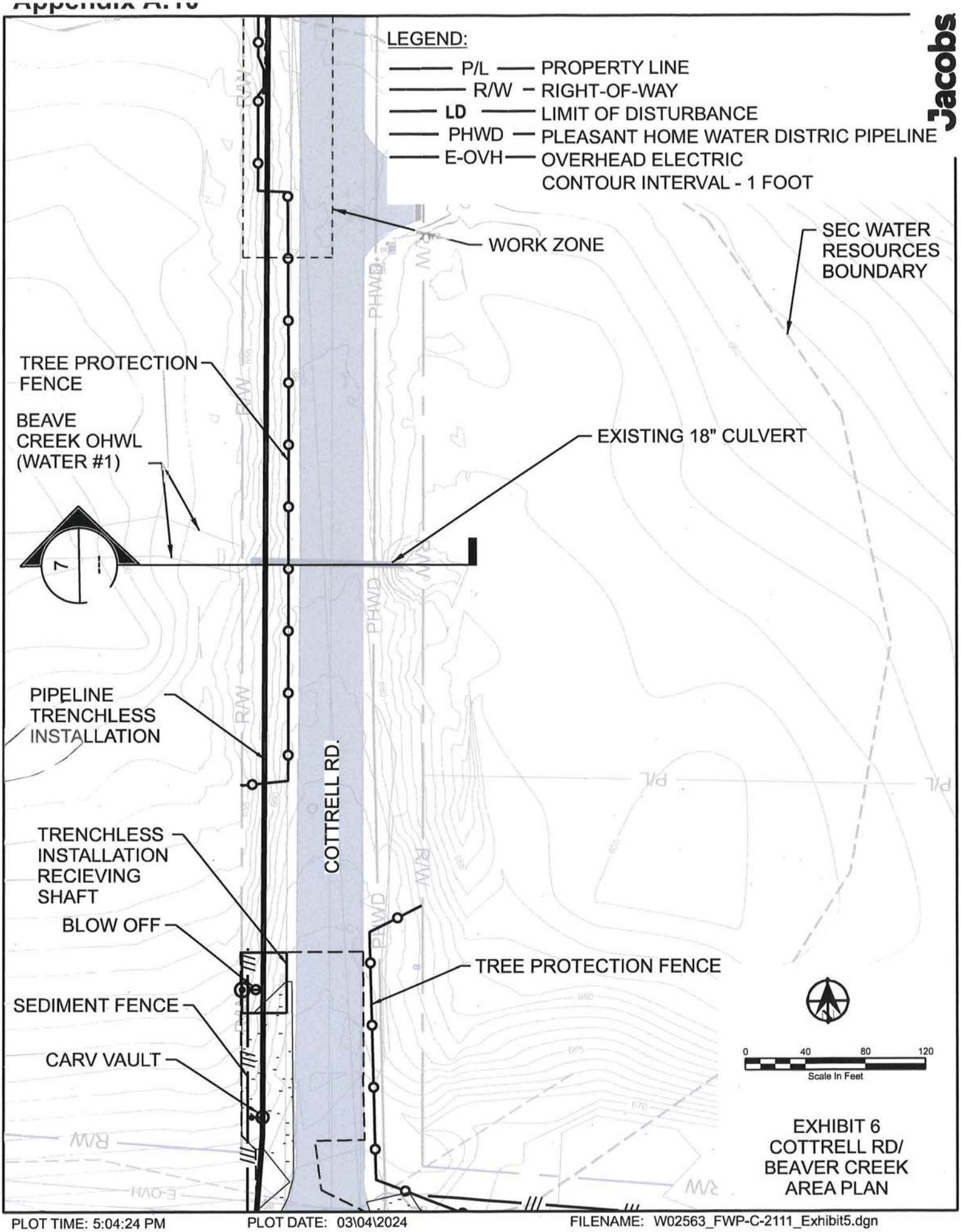


EXHIBIT 5
DODGE PARK BLVD
WETLAND AREA
SECTION VIEW

Jacobs



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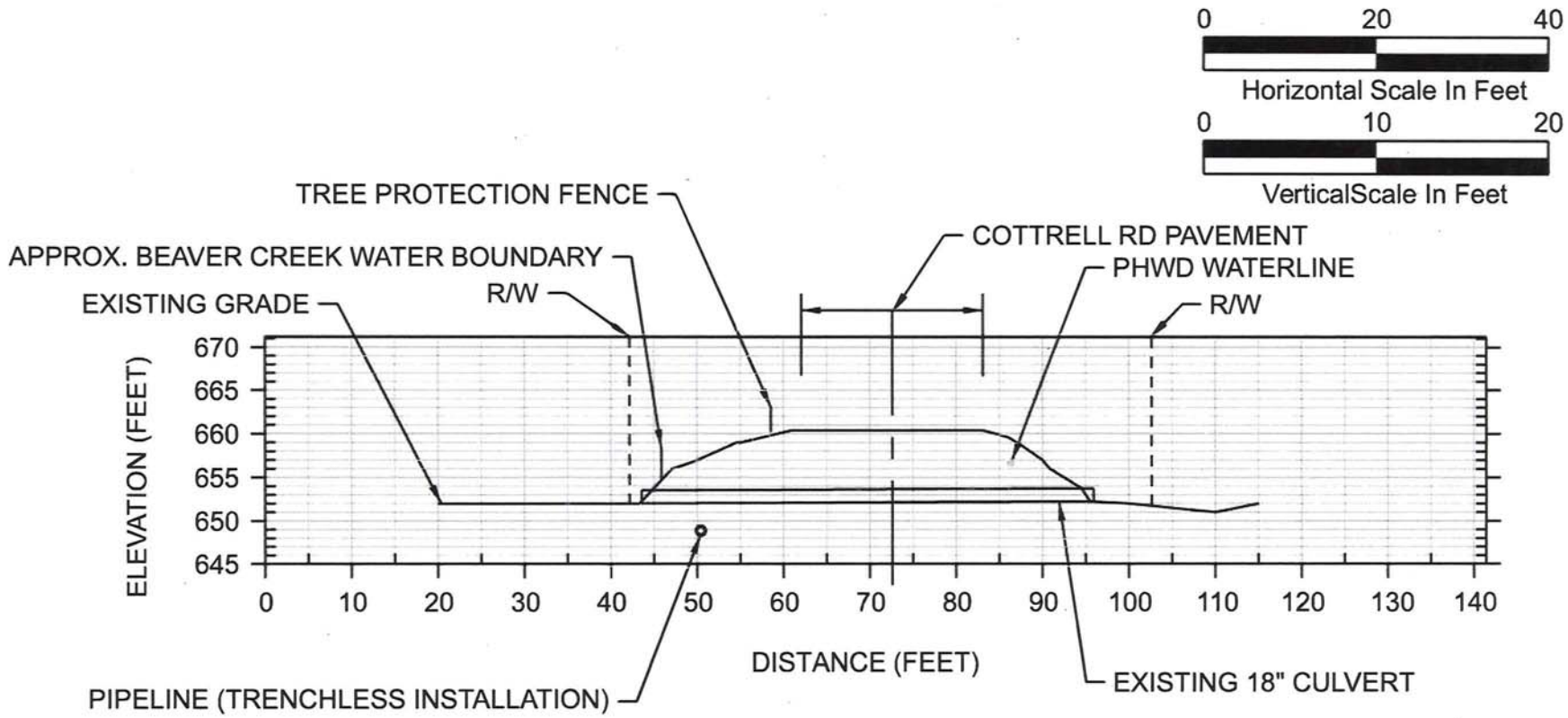
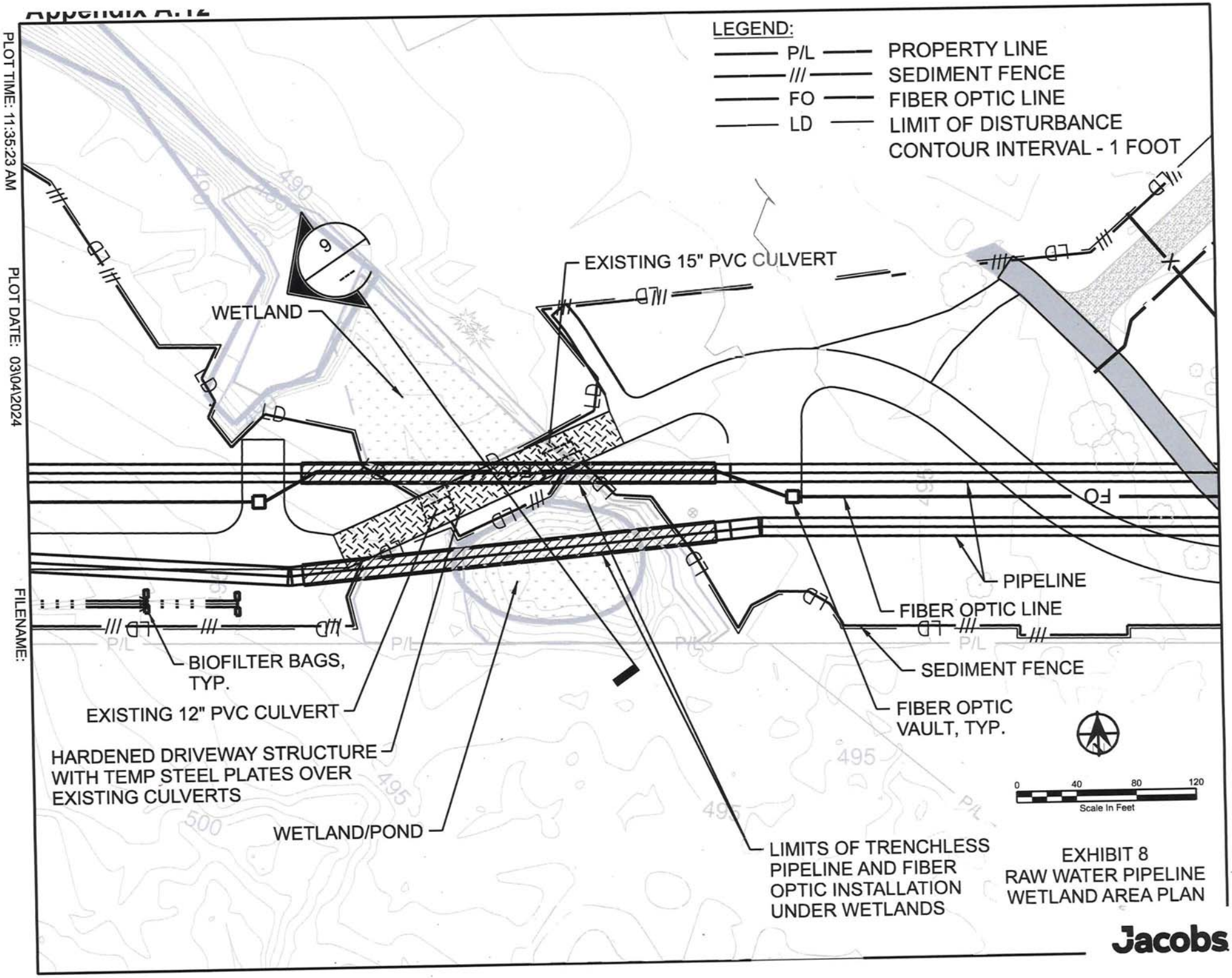


EXHIBIT 7
COTRELL RD/
BEAVER CREEK AREA
SECTION VIEW

Jacobs


LEGEND:
P/L PROPERTY LINE
/// SEDIMENT FENCE
FO FIBER OPTIC LINE
LD LIMIT OF DISTURBANCE
CONTOUR INTERVAL - 1 FOOT
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PLOT DATE: 03\04\2024
FILENAME:
WETLAND
EXISTING 15" PVC CULVERT
PIPELINE
FIBER OPTIC LINE
SEDIMENT FENCE
FIBER OPTIC VAULT, TYP.
BIOFILTER BAGS, TYP.
EXISTING 12" PVC CULVERT
HARDENED DRIVEWAY STRUCTURE WITH TEMP STEEL PLATES OVER EXISTING CULVERTS
WETLAND/POND
LIMITS OF TRENCHLESS PIPELINE AND FIBER OPTIC INSTALLATION UNDER WETLANDS
0 40 80 120
Scale In Feet
EXHIBIT 8
RAW WATER PIPELINE
WETLAND AREA PLAN
Jacobs

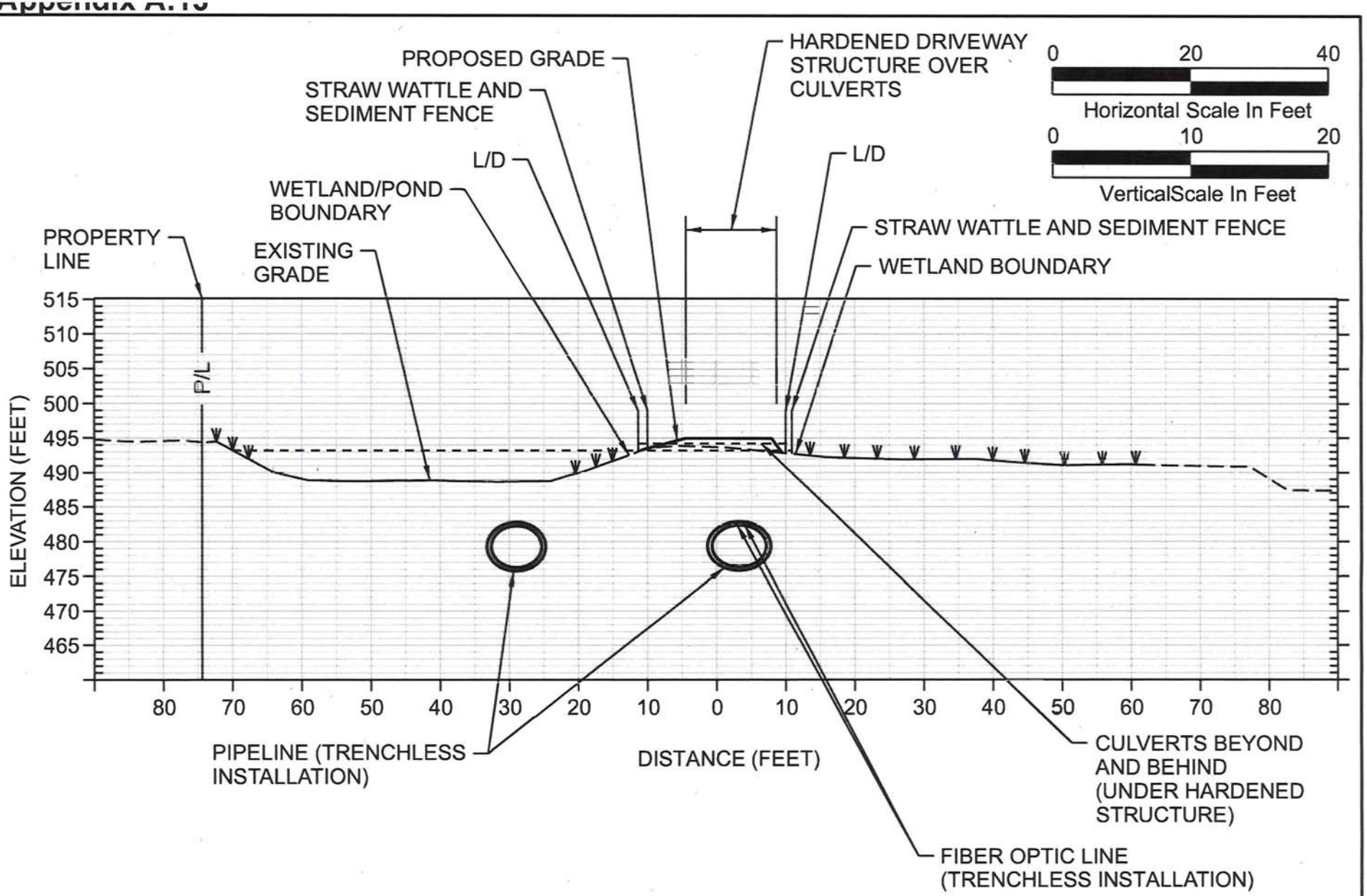

EXHIBIT 9
RAW WATER PIPELINE
WETLAND AREA
SECTION VIEW

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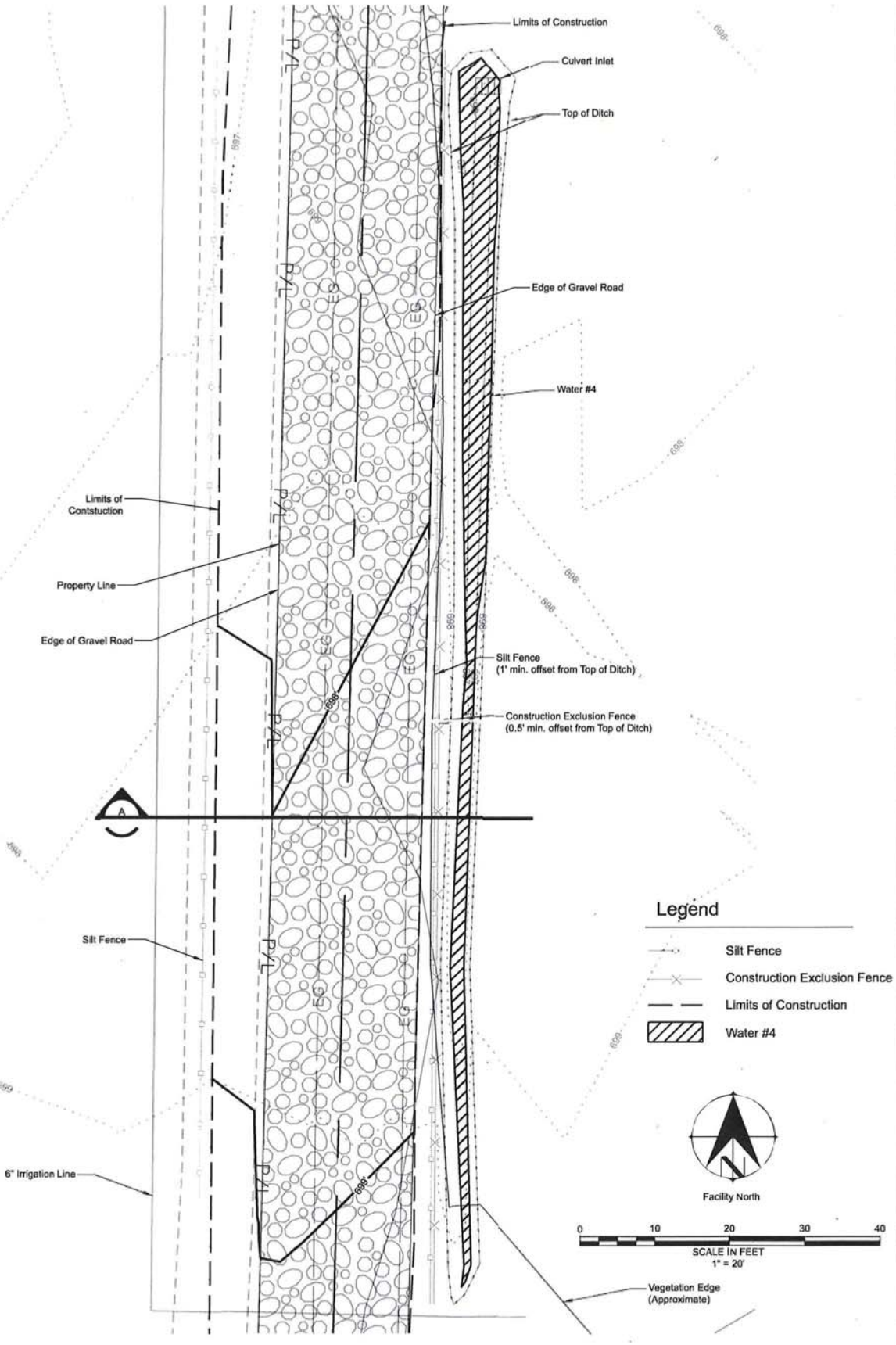
Jacobs



PORTLAND WATER BUREAU
FROM FOREST TO FAUCET

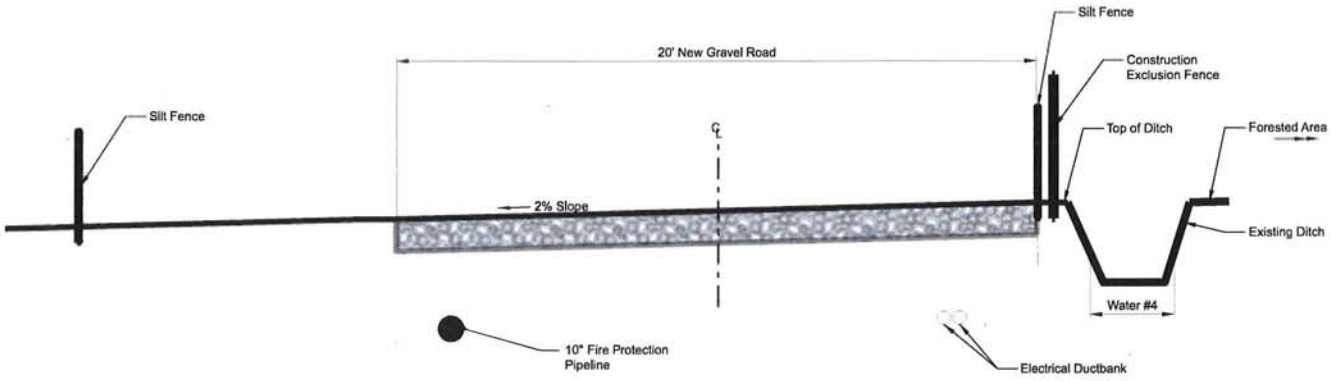
David W. Peters, Engineering Manager, PE No 16683 — Date

Bull Run Filtration Facility

Civil

Water #4 (WD #2023-0085) Near Forested Area
Emergency Access Road

SAP Project No
W02229
1/4 Section
3765 / 3766
Sheet No



A Cross Section Near Water #4
N.T.S.

PORTLAND WATER BUREAU
FROM FOREST TO FAUCET

David W. Peters, Engineering Manager, PE No 16683 — Date

CITY OF PORTLAND, OREGON 1851

Bull Run Filtration Facility

Civil

Water #4 (WD #2023-0085) Near Forested Area
Emergency Access Road

SAP Project No
W02229
1/4 Section
3765 / 3766
Sheet No

MEMORANDUM

To: Melinda Butterfield, DSL Aquatic Resources Coordinator
From: Anita Cate Smyth, M.S., SPWS
Date: March 6, 2024
Re: PWB Filtration Facilities - Additional information for 64845GA

This document provides responses to comments in the DSL eligibility checklist for this project. Please see below for a discussion of each one. The associated figure edits are attached.

Response to GA Application Form comments

Block 1: corrected to provide Bonita Oswald, Portland Water Bureau, as the Responsible Party.

Block 3: corrected to provide tax lot and latitude/longitude information at the impact location.

Block 6: application signed by Bonita Oswald.

Response to Drawing comments

Location Map: A new Project Area Map (A.1) was created to provide additional information about the proposed project area. The map includes the footprint of the filtration facility, finished water intertie, and dashed lines indicating the pipeline alignments.

Plan View Drawing:

Appendix A.4 has been revised to show temporary erosion control and BMPs proposed near the impacted wetland.

New Appendices A.8 through A.15 provide plan and cross-sectional views of the area of impact and locations where the project passes near jurisdictional waters and wetlands. Limits of disturbance (L/D), erosion control measures and Best Management Practices are shown.

Appendices A.8 and A.9 cover the area immediately southeast of the view in Appendix A.4, depicting the location of the pipeline in the Dodge Park Boulevard right of way relative to resources to the south. The pipeline is located in the roadway prism and jogs to the north to avoid Wetland #2. A fiber optic line lies under the toe of the road prism and will pass under the edge of the wetland with trenchless installation. No ground surface disturbance is planned in the wetland. Limits of disturbance (L/D) and erosion control BMPs such as straw wattles and sediment fence are shown.

Appendices A.10 and A.11 show the area near Cottrell Road at Beaver Creek (Water #1). The pipe will be installed using trenchless methods in the road prism outside the jurisdictional

boundary of the creek. The pipe also passes under a culvert that conveys Beaver Creek from east to west without disturbing it.

Appendices A.12 and A.13 depict activity in the area of Wetlands #3 and #4 and Water #2. Construction access is achieved by placing temporary steel plates over the existing farm access road and associated culverts. The pipeline and fiber optic lines will be installed using trenchless construction near the water resources (see hatched area) to avoid surface disturbance in those areas; trenched installation resumes in the upland areas beyond the water resources. The work area will be isolated with sediment fencing and straw wattles to prevent sediment migration from upland areas.

Appendices A.14 and A.15 show the area near Water #4 where an existing farm road will be improved to serve as emergency access for the filtration facility. All work will be kept to the west, outside of the roadside ditch where this water is located. Limits of construction, silt fencing, and the construction exclusion fence are shown.

General Authorization for Temporary Impacts to Non-tidal Wetlands

The following conditions apply to all projects determined to be eligible for this general authorization:

(1) **Responsible Party.** The person listed on the notification as the responsible party is responsible for the activities of all contractors or other operators involved in project work covered by the GA.

(2) **Copy of Approved Notification Available for Inspection**. A copy of the notification approved by the Department must be available at the work site whenever noticed activities are being conducted.

(3) **Site Access Required.** Employees of the Department and all authorized representatives must be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under a notification.

(4) **Archeological Resources.** If any archeological sites, resources or artifacts are discovered during construction, work must immediately cease and the State Historic Preservation Office must be contacted.

(5) **ODFW Fish Passage Requirement.** The noticed activity must meet Oregon Department of Fish and Wildlife requirements for fish passage before the project is started (ORS 509.580 to 509.901 and OAR 635-412-0005 to 0040).

(6) **Hazards to Recreation, Navigation and Fishing.** The activity must be timed so as not to interfere with or create a hazard to recreational and commercial navigation and fishing.

(7) **Work Period in Jurisdictional Areas.** Fill or removal activities below the Ordinary High Water Line must be conducted when recommended by ODFW, unless otherwise coordinated with Oregon Department of Fish and Wildlife and approved in writing by DSL. Work is prohibited when fish eggs are present within the reach where activities are being conducted.

(8) **Pre-Construction Resource Area Fencing or Flagging.** Prior to any site grading, the boundaries of any avoided wetlands, waterways and riparian areas adjacent to the project site must be surrounded by noticeable construction fencing or flagging. There must be no vegetation removal or heavy equipment within marked areas. The marked areas must be maintained during construction of the project and be removed immediately upon project completion.

(9) **Erosion Control Methods.** The following erosion control measures must be installed at the construction site prior to construction and maintained during and after construction to prevent erosion and minimize movement of soil into waters of this state:

(a) All exposed soils must 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 must 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, must 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 permanent fill, all construction access points through, and staging areas in, riparian and wetland areas must 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 must be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control if native vegetation is unavailable. If soils are to remain exposed for more than seven days after completion of the permitted work, they must 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, tackified seed mulch must be used so the seed does not wash away before germination and rooting;

(f) Dredged or other excavated material must be placed on upland areas having stable slopes and must be prevented from eroding back into waterways and wetlands;

(g) Erosion control measures must be inspected and maintained as necessary to ensure their continued effectiveness until soils become stabilized; and

(h) All erosion control structures must be removed when the project is complete and soils are stabilized and vegetated.

(10) **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 must 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 must have a 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 must be reported to the Oregon Emergency Response System (OERS) at 1-800-452-0311.

(11) **Raising or Redirecting Water.** The project must not cause water to rise or be redirected and result in damage to structures or property.

(12) **Wetlands of Conservation Concern.** The project must not involve impacts to wetlands identified as a wetland type of conservation concern. Wetlands of Conservation Concern are bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, inter-dunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and un-diked tidal wetlands, as determined by the Department.

(13) **Waste Disposal.** Old piling and other waste material discarded by the project must be disposed of in an appropriate disposal facility. There must be no temporary storage of piling or other waste material below top of bank, in any wetland, Federal Emergency Management Administration designated floodway, or an area historically subject to landslides.

(14) **DSL May Halt or Modify.** DSL retains the authority to temporarily halt or modify the project in case of unforeseen damage to natural resources.

(15) **Work Area Isolation.** The work area must be isolated from the water during construction. All structures and materials used to isolate the work area must be removed immediately following construction and water flow returned to pre-construction conditions. All fish must be salvaged from the isolated area in accordance with Oregon Department of Fish and Wildlife requirements.

(16) **Spoil Disposal.** Spoil materials, not used in the project, must be placed in an upland location. Spoil materials used in the project must be included in the cumulative removal-fill calculation for the activity.

(17) **Temporary Impact Rectification**. Rectification of temporary impacts includes re-establishment of pre-existing contours and pre-existing vegetation.

(18) **Timing of Temporary Impact Rectification**. Re-establishment of pre-construction contours must be completed immediately following project completion and within the same construction season as the temporary impact. Planting must be completed within six months of re-establishment of pre-existing contours.

(19) **Post-Construction Report Required.** Within two years of planting, a report must be submitted to the Department. The report must include:

(a) Data plots, according to OAR 141-090, to confirm that the wetland area impacted by the project meets wetland criteria; and

(b) Photos taken at the previously established photo points.

(20) **Protection of Ground Surface**. Before placing temporary fill in wetlands, fabric must be placed to allow complete removal of all temporary materials from the wetlands. If necessary to assist with removal of the fill, chain link fence or similar material may be placed under the fill. All fabric, fencing and other materials must be completely removed at project completion.

(21) **Stockpile Topsoil**. When trenching, the upper 12 inches of topsoil must be removed and stockpiled separately from subsurface soils and used as the final layer in backfilling.

(22) **Prevent Hydraulic Piping.** The project must be constructed to prevent underground hydraulic piping to dewater the site or adjacent wetlands. If the native underlying soils are not used as bedding material, and a coarser, non-native soil or other material is used, preventive measures must be used such as restoration of the restrictive layer and placement of clay or other impermeable plugs. Such plugs must be placed at each wetland boundary.

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

September 16, 2024

Regulatory Branch
Corps No. NWP-2024-102

Ms. Bonita Oswald
Portland Water Bureau
400 SW 6th Avenue
Portland, Oregon 97205
bonita.oswald@PortlandOregon.gov

Dear Ms. Oswald:

The U.S. Army Corps of Engineers (Corps) received your request for Department of the Army authorization to temporarily impact Wetland 1 through excavation and discharge of approximately 50.4 cubic yards of topsoil, structural film and bedding material within 83 square feet of wetlands. The project site is located near 33304 SE Lusted Road near Gresham, Multnomah County, Oregon (Latitude/Longitude: 45.4688°, -122.3165°. This letter verifies your project as depicted on the enclosed drawings (Enclosure 1) is authorized by Nationwide Permit (NWP) No. 58, Utility Line Activities for Water and Other Substances (Federal Register, January 13, 2021, Vol. 86, No. 8).

The proposed work consists of installation of a water pipeline below SE Dodge Park Boulevard. You will excavate the area, install the new pipe, backfill with native material, and replant the disturbed areas. The site will be accessed from SE Dodge Park Road and existing dirt farm roads to the north. Additionally, you will stage temporary spoil material storage in the uplands north of the impact area.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed Nationwide Permit 58 Terms and Conditions (Enclosure 2); the Oregon Department of Environmental Quality (DEQ) Section 401 Water Quality Certification Conditions (Enclosure 3); and the following special conditions:

a. This Corps permit does not authorize you to take an endangered species, in particular the USFWS Animal Trust Species and USFWS Plant Trust Species. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a biological opinion under ESA Section 7, with “incidental take” provisions with which you must comply). The EPA is the lead federal agency for ESA consultation for this project. On 12 August 2020, the U.S. Fish and Wildlife Service (USFWS) concurred your project, if implemented as proposed, is not likely to adversely affect a listed species and/or adversely modify critical habitat nor constitute take of a listed species (USFWS

Reference Number 01EOFW00- 2020-I-0525). Failure to implement the project as proposed in Enclosure 4, which is the concurrence letter from the USFWS, may constitute noncompliance with the ESA and your Corps permit. The USFWS is the appropriate authority to determine compliance with the ESA.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined the project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The Corps did not prepare a jurisdictional determination for this project. The Corps has treated the aquatic resource to be affected by this project as jurisdictional waters of the U.S. If you believe the Corps does not have jurisdiction over some or all of the aquatic resources at the project site, you may request an Approved Jurisdictional Determination (AJD). If one is requested, please be aware that we may require the submittal of additional information to complete the AJD and work authorized in this letter may not occur until the Corps completes the AJD.

The delineation included herein has been conducted to identify the location and extent of the aquatic resources for purposes of the Clean Water Act for the particular site identified in this request. This delineation may not be valid for the Wetland Conservation Provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should discuss the applicability of a Natural Resources Conservation Service Certified Wetland Determination with the local USDA service center, prior to starting work.

The verification of this NWP is valid until March 14, 2026, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 14, 2026, you will have until March 14, 2027, to complete the activity under the enclosed terms and conditions of this NWP. If the work cannot be completed by March 14, 2027, you will need to obtain a new NWP verification or authorization by another type of Department of the Army permit.

Our verification of this NWP is based on the project description and construction methods provided in your permit application. If you propose changes to the project, you must submit revised plans to this office and receive our approval of the revisions prior to performing the work. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of

the Clean Water Act. You must also obtain all local, state, and other federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Compliance Certification* form (Enclosure 5). We would like to hear about your experience working with the Portland District, Regulatory Branch. Please complete a customer service survey form available on our website (https://regulatory.ops.usace.army.mil/customer-service-survey/).

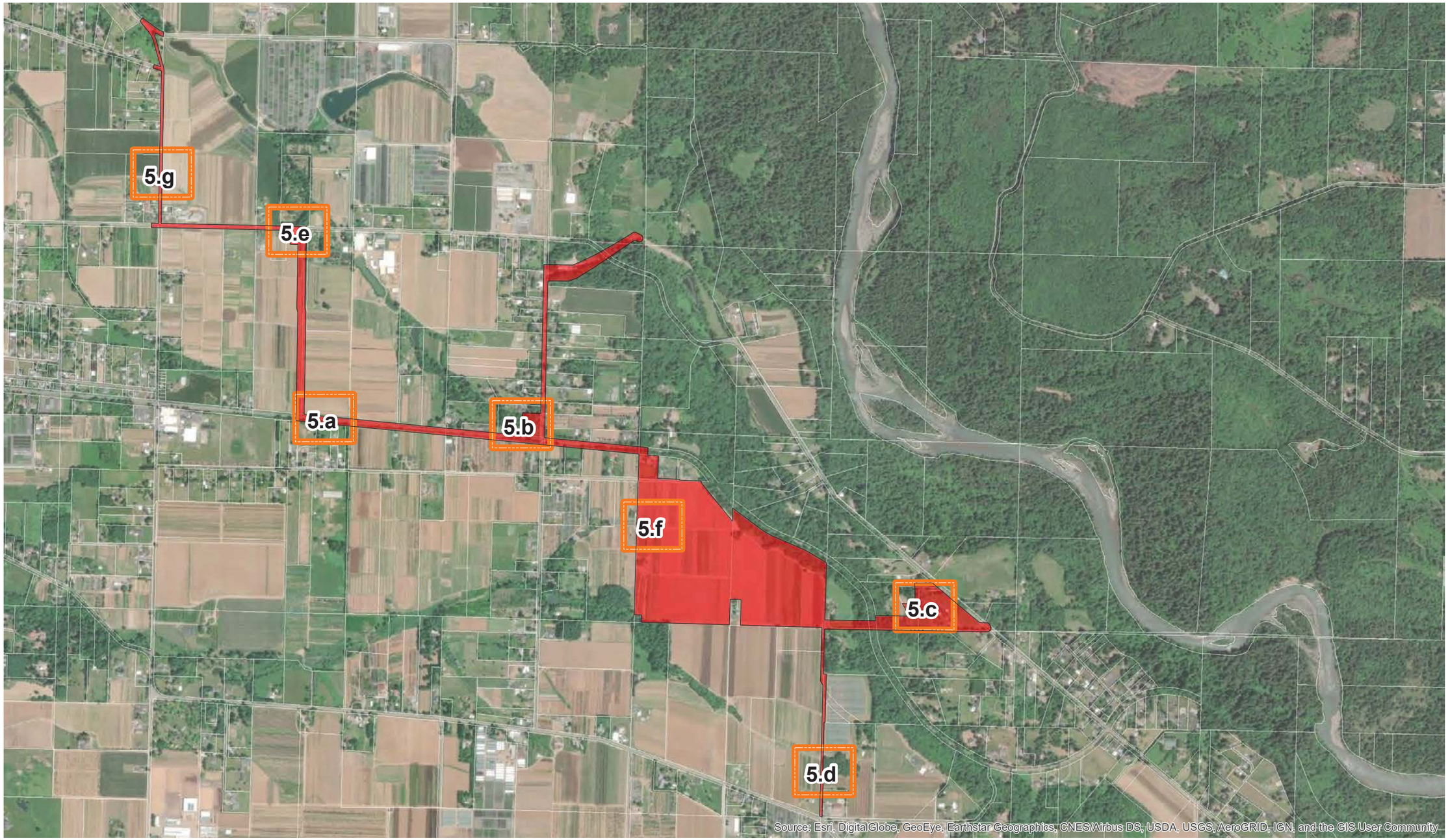
If you have any questions regarding this NWP verification, please contact Dr. Tasha Metz by telephone at 409-766-6384or by email at Tasha.L.Metz@usace.army.mil.

FOR THE COMMANDER, LARRY D. CASWELL, JR., PE, PMP, COLONEL, U.S. ARMY, DISTRICT COMMANDER and DISTRICT ENGINEER:

For: William D. Abadie
Chief, Regulatory Branch

Enclosures

cc:
Winterbrook Planning (Anita Smyth, anita@winterbrookplanning.com)
Oregon Department of State Lands (Melinda Butterfield, melinda.butterfield@dsl.oregon.gov)
Oregon Department of Environmental Quality (Delia Negru, Delia.NEGRU@deq.oregon.gov)



Bull Run TREATMENT PROJECTS Filtration

Appendix A.1

Figure 5: Index Map

Wetland Maps

Study Area

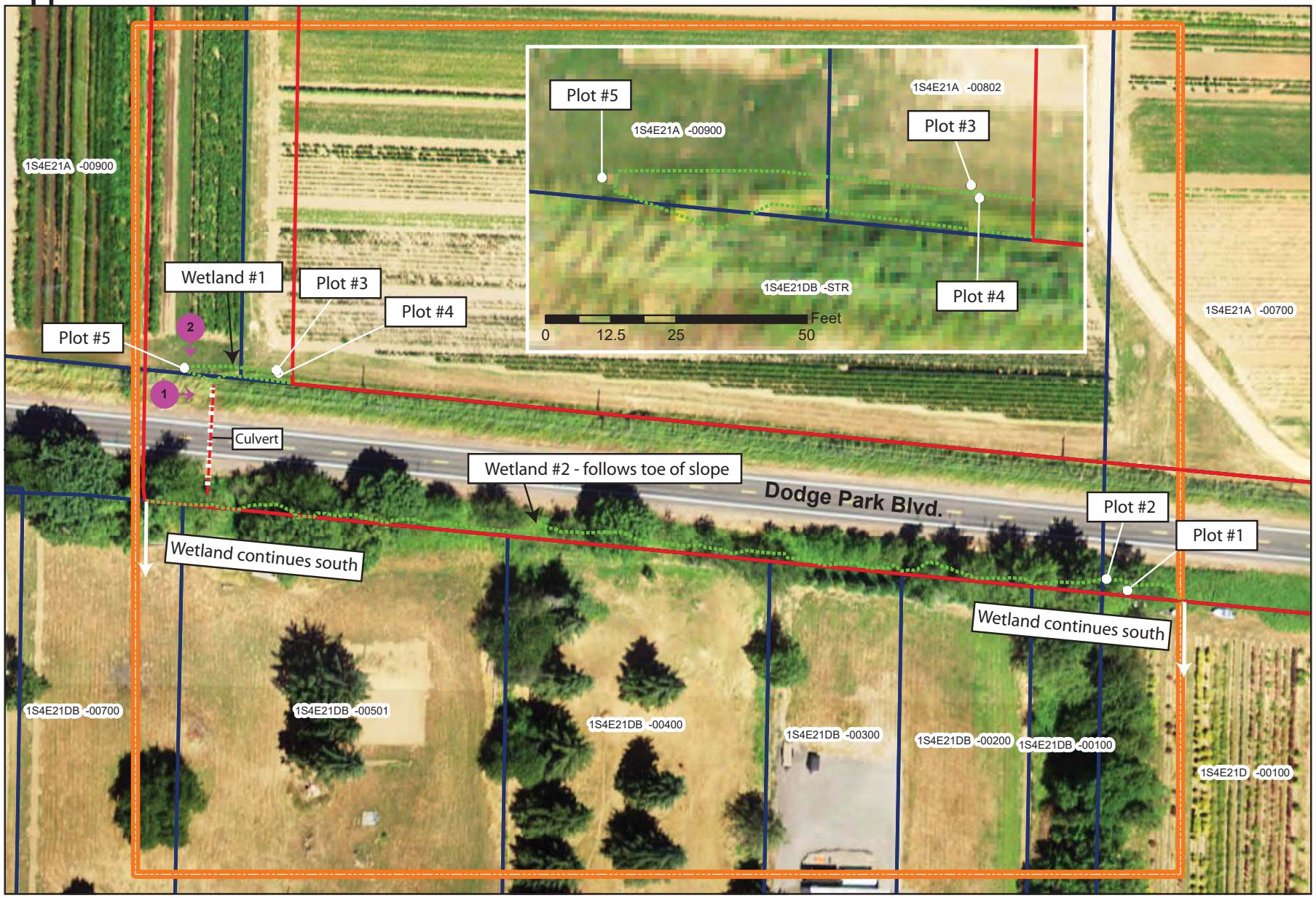
Tax Lots (White)

1 inch = 0.25 Miles

0 500 1,000 2,000 3,000 4,000 Feet

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl

Appendix A.2



Bull Run TREATMENT PROJECTS Filtration

Figure 5a: Potentially Jurisdictional Resources Map

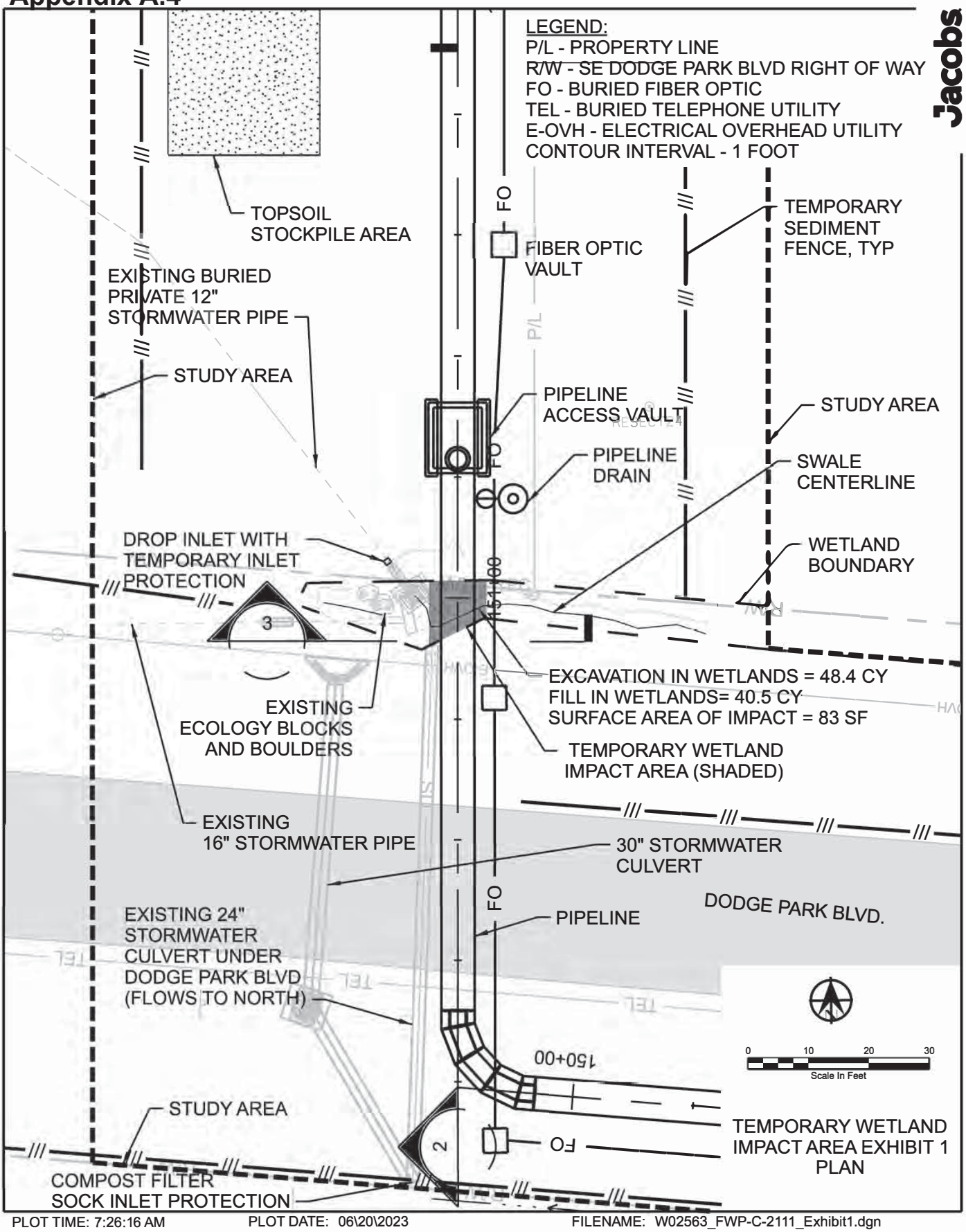
Study Area | Tax Lots | # Photopoint & Direction of View | Key Map Area | Wetland Boundary

Sample plot locations and jurisdictional boundaries were surveyed using a Trimble Geox 8000 handheld GPS device with accuracy +/-1.0 foot.

1 inch = 100 feet

0 25 50 100 Feet

Coordinate System: NAD 1983 HARN StatePlane Oregon North FIPS 3601 Feet Intl


LEGEND:
P/L - PROPERTY LINE
R/W - SE DODGE PARK BLVD RIGHT OF WAY
FO - BURIED FIBER OPTIC
TEL - BURIED TELEPHONE UTILITY
E-OVH - ELECTRICAL OVERHEAD UTILITY
CONTOUR INTERVAL - 1 FOOT
Jacobs
TOPSOIL STOCKPILE AREA
FIBER OPTIC VAULT
TEMPORARY SEDIMENT FENCE, TYP
EXISTING BURIED PRIVATE 12" STORMWATER PIPE
STUDY AREA
PIPELINE ACCESS VAULT
STUDY AREA
PIPELINE DRAIN
SWALE CENTERLINE
DROP INLET WITH TEMPORARY INLET PROTECTION
WETLAND BOUNDARY
EXCAVATION IN WETLANDS = 48.4 CY
FILL IN WETLANDS= 40.5 CY
SURFACE AREA OF IMPACT = 83 SF
EXISTING ECOLOGY BLOCKS AND BOULDERS
TEMPORARY WETLAND IMPACT AREA (SHADED)
EXISTING 16" STORMWATER PIPE
30" STORMWATER CULVERT
DODGE PARK BLVD.
PIPELINE
EXISTING 24" STORMWATER CULVERT UNDER DODGE PARK BLVD (FLOWS TO NORTH)
0 10 20 30
Scale In Feet
STUDY AREA
TEMPORARY WETLAND IMPACT AREA EXHIBIT 1 PLAN
COMPOST FILTER SOCK INLET PROTECTION
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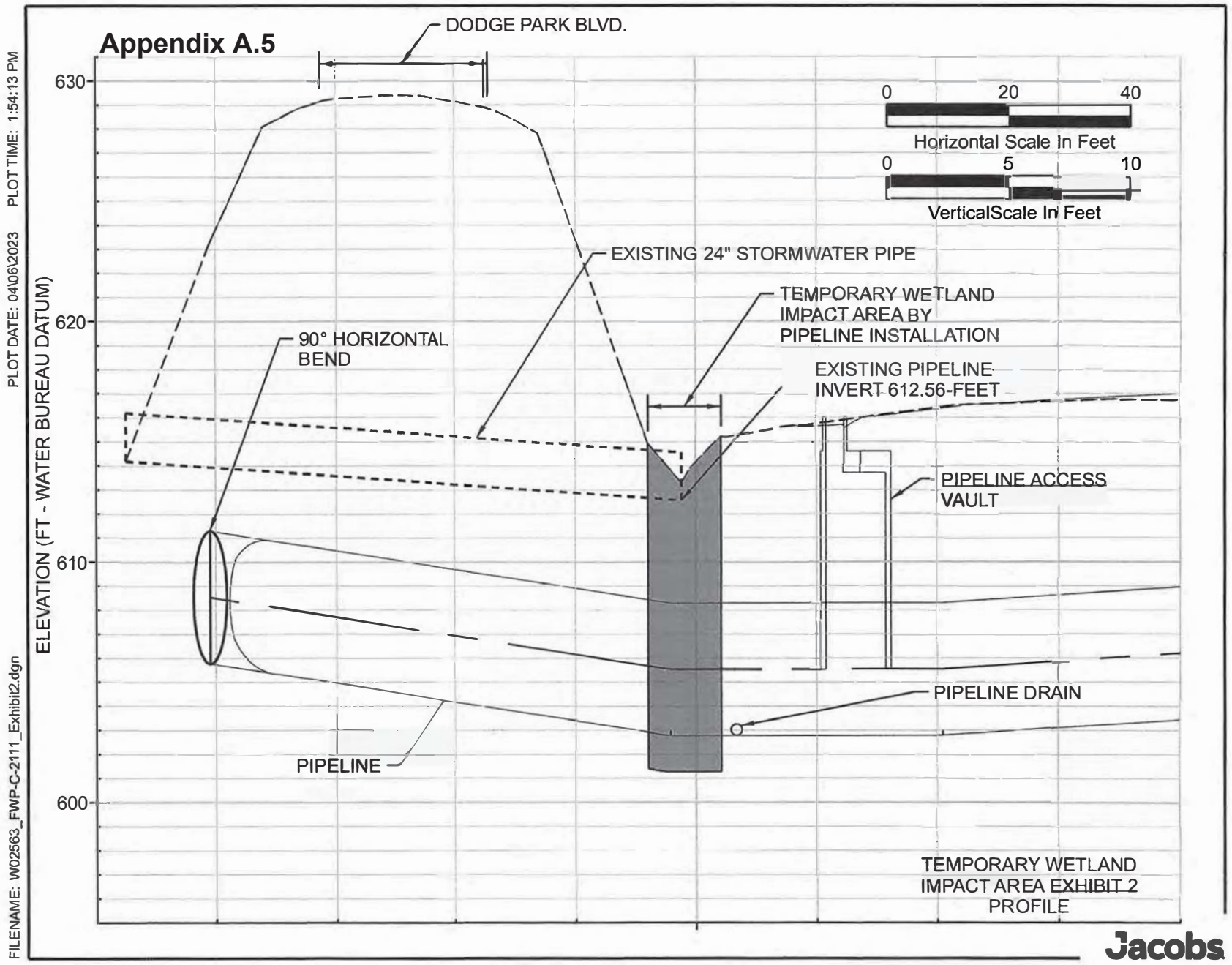
Appendix A.5
DODGE PARK BLVD.
630
620
610
600
ELEVATION (FT - WATER BUREAU DATUM)
0
20
40
Horizontal Scale In Feet
0
5
10
VerticalScale In Feet
EXISTING 24" STORMWATER PIPE
TEMPORARY WETLAND
IMPACT AREA BY
PIPELINE INSTALLATION
90° HORIZONTAL
BEND
EXISTING PIPELINE
INVERT 612.56-FEET
PIPELINE ACCESS
VAULT
PIPELINE DRAIN
PIPELINE
TEMPORARY WETLAND
IMPACT AREA EXHIBIT 2
PROFILE
Jacobs
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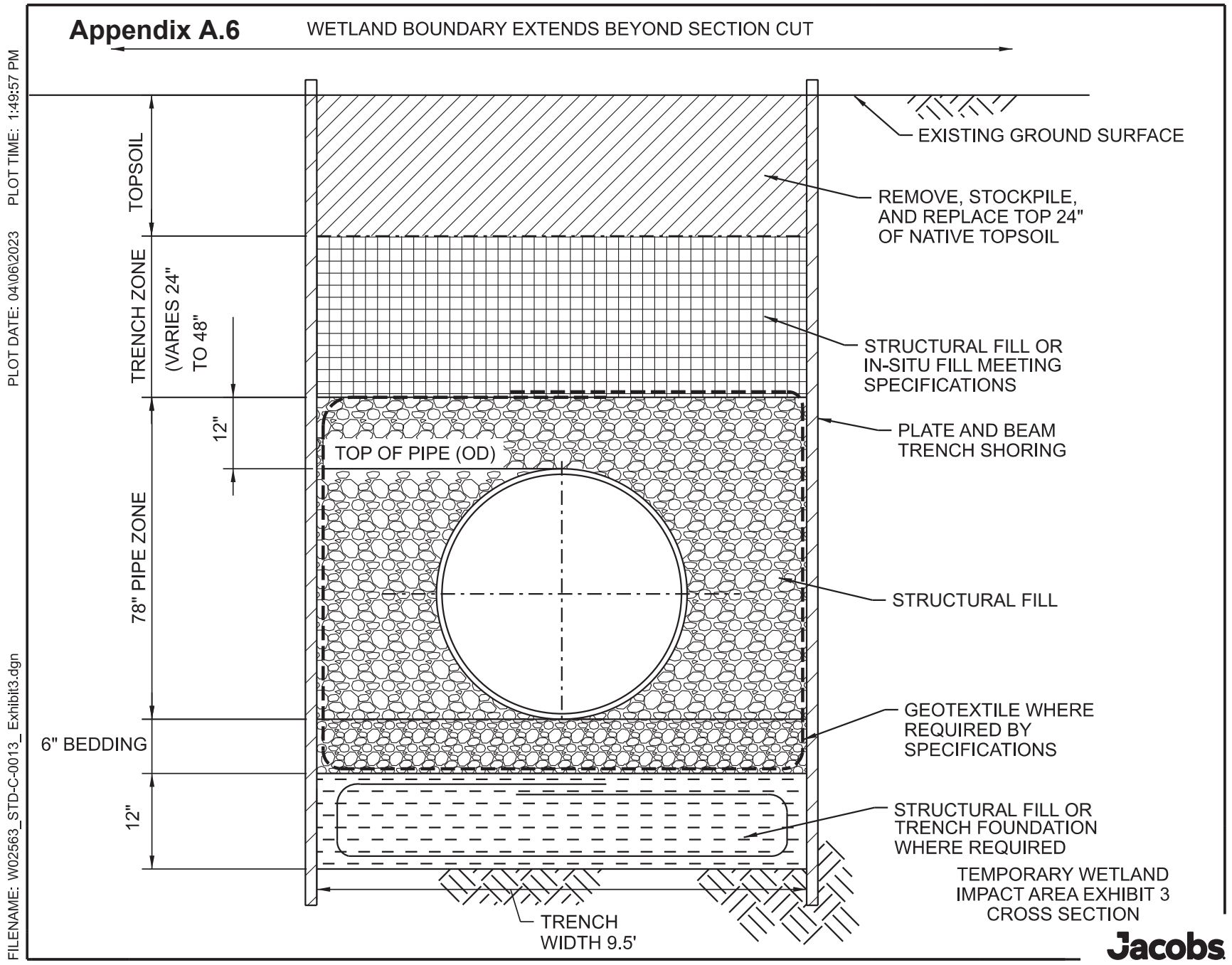
Appendix A.6
WETLAND BOUNDARY EXTENDS BEYOND SECTION CUT
EXISTING GROUND SURFACE
TOPSOIL
REMOVE, STOCKPILE, AND REPLACE TOP 24" OF NATIVE TOPSOIL
TRENCH ZONE
(VARIES 24" TO 48")
STRUCTURAL FILL OR IN-SITU FILL MEETING SPECIFICATIONS
12"
TOP OF PIPE (OD)
PLATE AND BEAM TRENCH SHORING
78" PIPE ZONE
STRUCTURAL FILL
GEOTEXTILE WHERE REQUIRED BY SPECIFICATIONS
6" BEDDING
12"
STRUCTURAL FILL OR TRENCH FOUNDATION WHERE REQUIRED
TEMPORARY WETLAND IMPACT AREA EXHIBIT 3 CROSS SECTION
TRENCH WIDTH 9.5'
Jacobs
PLOT DATE: 04\06\2023 PLOT TIME: 1:49:57 PM
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US Army Corps of Engineers ®
Portland District

Nationwide Permit 58
Terms and Conditions

Effective Date: March 15, 2021

A. Description of Activities Authorized by Nationwide Permit 58
B. Nationwide Permit General Conditions
C. District Engineer's Decision
D. Further Information
E. Portland District Regional General Conditions
F. Portland District Nationwide Permit Specific Regional Condition

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In addition to any special conditions that may be required on a case-by-case basis by the District Engineer, the following terms and conditions must be met, as applicable, for a Nationwide Permit authorization to be valid in Oregon.

A. Description of Activities Authorized by Nationwide Permit (NWP) 58
58. *Utility Line Activities for Water and Other Substances*. Activities required for the construction, maintenance, repair, and removal of utility lines for water and other substances, excluding oil, natural gas, products derived from oil or natural gas, and electricity. Oil or natural gas pipeline activities or electric utility line and telecommunications activities may be authorized by NWPs 12 or 57, respectively. This NWP also authorizes associated utility line facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2-acre of waters of the United States for each single and complete project.

Utility lines: This NWP authorizes discharges of dredged or fill material into waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines for water and other substances, including outfall and intake structures. There must be no change in pre-construction contours of waters of the United States. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose that is not oil, natural gas, or petrochemicals. Examples of activities authorized by this NWP include utility lines that convey water, sewage, stormwater, wastewater, brine, irrigation water, and industrial products that are not petrochemicals. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in

such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2-acre of waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for above-ground utility lines: This NWP authorizes the construction or maintenance of foundations for above-ground utility lines in all waters of the United States, provided the foundations are the minimum size necessary.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including utility line substations, in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges of dredged or fill material into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (see 33 CFR part 322). Overhead utility lines constructed over Section 10 waters and utility lines that are routed in or under Section 10 waters without a discharge of dredged or fill material require a Section 10 permit.

This NWP authorizes, to the extent that Department of the Army authorization is required, temporary structures, fills, and work necessary for the remediation of inadvertent returns of drilling fluids to waters of the United States through sub-soil fissures or fractures that might occur during horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines. These remediation activities must be done as soon as practicable, to restore the affected waterbody. District engineers may add special conditions to this NWP to require a remediation plan for addressing inadvertent returns of drilling fluids to waters of the United States during

horizontal directional drilling activities conducted for the purpose of installing or replacing utility lines.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) a Section 10 permit is required; or (2) the discharge will result in the loss of greater than 1/10-acre of waters of the United States. (See general condition 32.) (Authorities: Sections 10 and 404)

Note 1: Where the utility line is constructed, installed, or maintained in navigable waters of the United States (i.e., Section 10 waters) within the coastal United States, the Great Lakes, and United States territories, a copy of the NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: For utility line activities crossing a single waterbody more than one time at separate and distant locations, or multiple waterbodies at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. Utility line activities must comply with 33 CFR 330.6(d).

Note 3: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, in accordance with the requirements for temporary fills.

Note 4: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to the General Bridge Act of 1946. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a Section 404 permit (see NWP 15).

Note 5: This NWP authorizes utility line maintenance and repair activities that do not qualify for the Clean Water Act Section 404(f) exemption for maintenance of currently serviceable fills or fill structures.

Note 6: For activities that require pre-construction notification, the PCN must include 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, including other separate and distant crossings that require Department of the Army authorization but do not require pre-construction notification (see paragraph (b)(4) of general condition 32). The district engineer will evaluate the PCN in accordance with Section D, "District Engineer's Decision." The district engineer may require mitigation to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see general condition 23).

B. 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 or her 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. If a bottomless culvert cannot be

used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

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, storm water management activities, and temporary and permanent road crossings, 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, or during low tides.

13. *Removal of Temporary Structures and Fills*. Temporary structures must be removed, to the maximum extent practicable, after their use has been discontinued. 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*. (a) No NWP 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.

(b) If a proposed NWP activity will 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, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. Permittees shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) 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). Information on these rivers is also available at: http://www.rivers.gov/.

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 designated critical habitat or critical habitat proposed for such designation. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA Section 7 consultation addressing the consequences of the proposed activity on listed species or critical habitat has been completed. See 50 CFR 402.02 for the definition of "effects of the action" for the purposes of ESA Section 7 consultation, as well as 50 CFR 402.17, which provides further explanation under ESA Section 7 regarding "activities that are reasonably certain to occur" and "consequences caused by the proposed action."

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA (see 33 CFR 330.4(f)(1)). If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA Section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under Section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat or critical habitat proposed for such designation, 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 species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation), the pre-construction notification must include the name(s) of the endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or that utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. 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. For activities where the non-Federal applicant has identified listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species (or species proposed for listing or designated critical habitat (or critical habitat proposed for such designation), or until ESA Section 7 consultation or conference 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 or conference with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an 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 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) If the non-federal permittee has a valid ESA Section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA Section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA Section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA Section 7 consultation conducted for the ESA Section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA Section 7 consultation for the ESA Section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA Section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA Section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA Section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at http://www.fws.gov/ or http://www.fws.gov/ipac and http://www.nmfs.noaa.gov/pr/species/esa/ respectively.

19. *Migratory Birds and Bald and Golden Eagles*. The permittee is responsible for ensuring that an action authorized by an NWP complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting the appropriate local office of the U.S. Fish and Wildlife Service to determine what measures, if any, are necessary or appropriate to reduce adverse effects to migratory birds or eagles, including whether "incidental take" permits are necessary and

available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. *Historic Properties*. (a) No activity is authorized under any NWP which may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places 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 (see 33 CFR 330.4(g)(1)). If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under Section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with Section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might 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 might have the potential to be affected by the proposed NWP activity 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 properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, 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 commensurate with potential impacts, which may include background research, consultation, oral history interviews, sample field investigation, and/or field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of Section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect.

(d) Where the non-Federal applicant has identified historic properties on which the proposed NWP activity might have the potential to cause effects and has 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 to historic properties or that NHPA Section 106 consultation has been completed. For non-federal permittees, 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. If NHPA Section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity 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 (54 U.S.C. 306113) 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*. Permittees that discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by an NWP, they must immediately notify the district engineer of what they 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 NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, 52, 57 and 58 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed by permittees in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after she or he determines 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 the individual and cumulative adverse environmental effects are no more than 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 individual and cumulative adverse environmental effects are no more than 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 environmental effects of the proposed activity are no more than minimal, and provides an activity-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 only minimal adverse environmental effects.

(d) Compensatory mitigation at a minimum one-for-one ratio will be required for all losses of stream bed that exceed 3/100-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 environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. This compensatory mitigation requirement may be satisfied through the restoration or enhancement of riparian areas next to streams in accordance with paragraph (e) of this general condition. For losses of stream bed of 3/100-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 only minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream

rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. If restoring riparian areas involves planting vegetation, only native species should be planted. 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 restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting 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 minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) 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 no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f).)

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) 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) through (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)). If permittee-responsible mitigation is the proposed option, and the proposed compensatory mitigation site is located on land in which another federal agency holds an easement, the district engineer will coordinate with that federal agency to determine if proposed compensatory mitigation project is compatible with the terms of the easement.

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan needs to address only the baseline conditions at the impact site and the number of credits to be provided (see 33 CFR 332.4(c)(1)(ii)).

(6) 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 (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity 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 an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible 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.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert 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 environmental effects of the activity to the no more than 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 or federal, 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*. (a) Where the certifying authority (state, authorized tribe, or EPA, as appropriate) has not previously certified compliance of an NWP with CWA Section 401, a CWA Section 401 water quality certification for the proposed discharge must be obtained or waived (see 33 CFR 330.4(c)). If the permittee cannot comply with all of the conditions of a water quality certification previously issued by certifying authority for the issuance of the NWP, then the permittee must obtain a water quality certification or waiver for the proposed discharge in order for the activity to be authorized by an NWP.

(b) If the NWP activity requires pre-construction notification and the certifying authority has not previously certified compliance of an NWP with CWA Section 401, the proposed discharge is not authorized by an NWP until water quality certification is obtained or waived. If the certifying authority issues a water quality certification for the proposed discharge, the permittee must submit a copy of the certification to the district engineer. The discharge is not authorized by an NWP until the district engineer has notified the permittee that the water quality certification requirement has been satisfied by the issuance of a water quality certification or a waiver.

(c) The district engineer or certifying authority 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)). If the permittee cannot comply with all of the conditions of a coastal zone management consistency concurrence previously issued by the state, then the permittee must obtain an individual coastal zone management consistency concurrence or presumption of concurrence in order for the activity to be authorized by an NWP. 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 CWA 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 authorized, subject to the following restrictions:

(a) If only one of the NWPs used to authorize the single and complete project has a specified acreage limit, the acreage loss of waters of the United States cannot 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.

(b) If one or more of the NWPs used to authorize the single and complete project has specified acreage limits, the acreage loss of waters of the United States authorized by those NWPs cannot exceed their respective specified acreage limits. For example, if a commercial development is constructed under NWP 39, and the single and complete project includes the filling of an upland ditch authorized by NWP 46, the maximum acreage loss of waters of the United States for the commercial development under NWP 39 cannot exceed 1/2-acre, and the total acreage loss of waters of United States due to the NWP 39 and 46 activities cannot exceed 1 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 implementation of 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 activity 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(l)(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 activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. *Activities Affecting Structures or Works Built by the United States*. If an NWP activity also requires review by, or permission from, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires Section 408 permission and/or review is not authorized by an NWP until the appropriate Corps office issues the Section 408 permission or completes its review to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. *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 are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might 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 Act (see 33 CFR 330.4(g)) has been completed. 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 activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) (i) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and 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, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures.

(ii) For linear projects where one or more single and complete crossings require pre-construction notification, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters (including those single and complete crossings authorized by an NWP but do not require PCNs). This information will be used by the district engineer to evaluate the cumulative adverse environmental effects of the proposed linear project, and does not change those non-PCN NWP activities into NWP PCNs.

(iii) Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity 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);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial and intermittent 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 wetlands, other special aquatic sites, and other waters. Furthermore, the 45-day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed 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 environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-federal permittees, if any listed species (or species proposed for listing) or designated critical habitat (or critical habitat proposed for such designation) might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat (or critical habitat proposed for such designation), the PCN must include the name(s) of those endangered or threatened species (or species proposed for listing) that might be affected by the proposed activity or utilize the designated critical habitat (or critical habitat proposed for such designation) that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must

state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act;

(9) For an activity that will 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, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an NWP activity that requires permission from, or review by, the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for Section 408 permission from, or review by, the Corps office having jurisdiction over that USACE project.

(c) *Form of Pre-Construction Notification*: The nationwide permit pre-construction notification form (Form ENG 6082) should be used for NWP PCNs. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(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 NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) 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; (ii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iii) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, 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 (FWS, state natural resource or water quality agency, EPA, 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 notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental 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 NWPs, including the need for mitigation to ensure that the net adverse environmental effects of the proposed activity are no more than 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.

(4) 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.

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

C. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the single and complete crossings of waters of the United States that require PCNs to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings of waters of the United States authorized by an NWP. If an applicant requests a waiver of an applicable limit, as provided for in NWPs 13, 36, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by an NWP and whether those cumulative adverse environmental effects are

no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands or 3/100-acre of stream bed, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters. The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences 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. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure that the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP

and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

D. Further Information

1. District engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

E. Portland District Regional Conditions

1. *Notification:* For permittees that received written NWP approval, upon starting the authorized activities, you shall notify the U.S. Army Corps of Engineers, Portland District, Regulatory Branch that the work has started. Notification shall be provided by e-mail to cenwp.notify@usace.army.mil and the email subject line shall include: Corps project number and the project location by county.

2. *Aquatic Resources of Special Concern*: Pre-construction notification to the District Engineer is required for all activities proposed in waters of the U.S. within, or directly affecting, an aquatic resource of special concern. Aquatic resources of special concern are resources that are difficult to replace, unique, and/or have high ecological function. For the purpose of this regional condition, aquatic resources of special concern are native eel grass (Zostera marina) beds, mature forested wetlands, bogs, fens, vernal pools, alkali wetlands, wetlands in dunal systems along the Oregon coast, estuarine wetlands, Willamette Valley wet prairie wetlands, marine gardens, marine reserves, kelp beds, and rocky substrate in tidal waters.

In addition to the content requirements of NWP General Condition (GC) 32, the pre-construction notification must include a statement explaining why the effects of the

proposed activity are no more than minimal. Written approval from the District Engineer must be obtained prior to commencing work.

Note: If the District Engineer determines that the adverse effects of the proposed activity are more than minimal, then the District Engineer will notify the applicant that either:

a. the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

b. the activity is authorized under the NWP subject to submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or

c. the activity is authorized under the NWP with specific modifications or conditions.

3. *Cultural Resources and Human Burials-Inadvertent Discovery Plan*: In addition to the requirements in NWP GCs 20 and 21, the permittee shall immediately notify the District Engineer if, at any time during the course of the work authorized, human burials, cultural items, or historic properties, as defined by the National Historic Preservation Act and Native American Graves Protection and Repatriation Act, are discovered. The permittee shall implement the following procedures as outlined on the Inadvertent Discovery Plan posted on the Portland District Regulatorywebsite at *https://www.nwp.usace.army.mil/Missions/Regulatory/Nationwide.aspx*

Notify the Portland District Engineer as soon as possible following discovery but in no case later than 24 hours. Notification shall be sent electronically (cenwp.notify@usace.army.mil) and shall identify the Corps project number and clearly specify the purpose is to report a cultural resource discovery. The permittee shall also notify the Corps representative (by email and telephone) identified in the verification letter.

4. *Essential Fish Habitat:* Activities which may adversely affect essential fish habitat, as defined under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), are not authorized by NWP until essential fish habitat requirements have been met by the applicant and the Corps. Non-federal permittees must submit a pre-construction notification to the District Engineer if essential fish habitat may be affected by, or is in the vicinity of, a proposed activity and shall not begin work until notified by the District Engineer that the requirements of the essential fish habitat provisions of the MSA have been satisfied and the activity is authorized. The notification must identify the type(s) of essential fish habitat (e.g., Pacific coast salmon, Pacific coast groundfish, and/or Coastal-pelagic species) managed by a Fishery Management Plan that may be affected. Information about essential fish habitat is available at NOAA's website: *http://www.westcoast.fisheries.noaa.gov*

5. *Bank Stabilization:* Permittee shall include the use of bioengineering techniques and natural materials in the project design to the maximum extent practicable and shall

minimize the use of rock. Bioengineering bank stabilization techniques are those that increase the strength and structure of soils with a combination of biological and mechanical elements (e.g., vegetation, root wads and woody debris, rock structures). Riparian plantings shall be included in all project designs unless the permittee can demonstrate that such plantings are not practicable.

6. *Work Area Isolation and Dewatering:* Appropriate best management practices shall be implemented to prevent erosion and to prevent sediments from entering waters of the U.S.

a. All in-water work shall be isolated from the active channel or conducted during low seasonal stream flows to the maximum extent practicable.

b. 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.

c. 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 waters of the U.S.

d. Upstream and downstream flows shall be maintained by routing flows around the construction site.

e. When dewatering is necessary for construction, a sediment basin, or other applicable method, shall be used to settle sediments prior to releasing the water back into the waterbody. Settled water shall be returned to the waterbody in such a manner as to avoid erosion. Sediment basins shall be placed in uplands.

f. Fish and other aquatic species must be salvaged (i.e., safely captured and relocated away from the project or development site) prior to dewatering. Contact ODFW for additional information regarding fish salvage.

7. *Dredging:* For NWP-authorized activities that involve removal of sediment from waters of the U.S., the permittee shall ensure that any necessary sediment characterization regarding size, composition, and potential contaminants is conducted and reviewed prior to dredging. Sediment characterization must be conducted per the Sediment Evaluation Framework for the Pacific Northwest (available at: *http://www.nwp.usace.army.mil/Missions/Environmental-Stewardship/DMM.aspx*).

Note: The return water from a contained disposal area is defined as a discharge of dredged material by 33 CFR part 323.2(d) and requires separate authorization from the District Engineer (*e.g.*, by NWP 16).

8. *Mechanized Equipment:* In addition to the requirements in NWP GC 11, permittee shall

implement the following practices to prevent or minimize impacts to the aquatic environment from mechanized equipment:

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

b. Spill prevention and containment materials shall be maintained and be readily accessible at vehicle staging areas. The amount of spill response materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials, shovels, brooms, and containment bags) maintained on-site must be appropriate for the size of the authorized activity.

Note: See Regional Condition 10 regarding timeframes for temporary fills.

9. *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. Temporary stockpiles of excavated or dredged material shall be stabilized to prevent erosion. Once soils or slopes have been stabilized, permittee shall completely remove and properly dispose of or re-use all non-biodegradable components of installed control measures.

10. *Temporary Fills and Impacts:* To ensure no more than minimal adverse environmental effects from temporary fills and impacts to waters of the U.S:

a. Temporary fills and/or impacts to waters of the U.S. shall not exceed six months unless otherwise approved by the District Engineer.

b. No more than one-half (½) acre of waters of the U.S. may be temporarily filled or impacted unless otherwise approved by the District Engineer (temporary fills and impacts do not affect specified limits for loss of waters associated with specific nationwide permits).

c. Native soils and/or sediments removed from waters of the U.S. for project construction shall be stockpiled and used for site restoration to the maximum extent practicable.

d. Site restoration of temporarily filled or impacted areas shall include returning the area to pre-project ground surface contours. The permittee shall appropriately revegetate temporarily filled or impacted areas with native, noninvasive herbs, shrubs, and/or tree species sufficient in number, spacing, and diversity to replace affected aquatic functions.

Note: The Corps will determine compensatory mitigation requirements for temporary fills and impacts on a case-by-case basis depending on the duration and nature of the temporary fill or impact and the type of aquatic resource affected.

11. *Contractor Notification of Permit Requirements:* The permittee must provide a copy of the Nationwide Permit verification letter, conditions, and permit drawings to all

contractors and any other parties performing the authorized work, prior to the commencement of any work in waters of the U.S.

12. Inspection of the Project Site: The permittee shall allow representatives of the District Engineer 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 the option to be on site during the inspection.

F. Portland District Nationwide Permit 58 Specific Regional Condition

NWP 58: Manholes placed in streams or other waterways require specific approval by the District Engineer.

Oregon
Tina Kotek, Governor

Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5263
FAX (503) 229-6945
TTY 711

July 30, 2024

Bonita Oswald
Portland Water Bureau
400 SW 6th Ave
Portland, OR 97205

RE: 401 Water Quality Certification Approval for 2024-102, Portland Water Bureau Bull Run Filtration Project.

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #58. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information, a public notice, and a higher review fee.

Certification Decision: Based on information provided by the USACE and the Applicant, DEQ has determined that implementation eligible activities under the proposed NWP will be consistent with water quality requirements including applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

Duration of Certificate: This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE Section 404 permit. A new 401 WQC must be requested with any modification of the USACE 404 permit.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.

401 GENERAL CERTIFICATION CONDITIONS

1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.
Rule: *40 CFR 121, OAR 340-048-0015*
Justification: *DEQ must be aware of responsible parties to ensure compliance.*

2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Permit Application and additional application materials (hereafter “the permit application materials”), unless otherwise authorized by DEQ. If the project is operated in a manner not

consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.
Rule: *OAR 340-048-0015*
Justification: *To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*

3) **401 WQC on Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.
Rule: *OAR 340-012*
Justification: *All parties must be aware of and comply with the 401 WQC, including on-site contractors.*

4) **Project Changes:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.
Rule: *OAR 340-048-0050*
Justification: *To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*

5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant 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 Section 11 of the 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.

In lieu of submitting the appropriate section of the USACE & Department of State Lands (DSL) Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: http://www.oregon.gov/deq/FilterDocs/lucs.pdf
Rule: *OAR 340-048-0020(2) (i), OAR 340-018*
Justification: *DEQ must ensure compliance with water quality land use laws at the local level.*

6) **Access:** The Applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:

   a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;

   b. To inspect best management practices (BMPs), monitoring or equipment or methods; and

   c. To collect samples or monitor any discharge of pollutants.

Rule: *OAR 340-012*
Justification: *DEQ must inspect facilities for compliance with all state rules and laws.*

7) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.
Rule: *OAR 340-012*
Justification: *If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.*

FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL CONDITIONS APPLY

8) **Erosion and Sediment Control**: During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit**.** Contact the DEQ Stormwater Program for more information at: https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx

In addition, the Applicant must:

a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.

b. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.

c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;

i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.

ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, Applicant must remove the sediment to its original contour.

d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.

e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.

f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.

g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.

Rule: *OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: 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.

The following specific requirements apply:

a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;

b. Use only clean fill, free of waste and polluted substances;

c. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;

d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;

e. Remove all foreign materials, refuse, and waste from the project area

Rule: *OAR 340-041-0007(8), ORS 468B.050, CWA Section 402*
Justification: *DEQ must ensure that pollution does not enter waterways.*

10) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges.
Rule: *ORS 468B.025(1)(a)*
Justification: *DEQ must ensure that pollution does not enter waterways.*

11) **Spill & Incident Reporting:**

a. In the event that deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. Containment and cleanup must begin immediately and be completed as soon as possible.

b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS, and US Fish and Wildlife Service (USFW).

Rule: *ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.*

12) **Vegetation Protection and Site Restoration:**

a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:

i. Minimization of project and impact footprint;

ii. Designation of staging areas and access points in open, upland areas;

iii. Fencing and other barriers demarking construction areas; and

iv. Use of alternative equipment (e.g., spider hoe or crane).

b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.

c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information: https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx

i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.

ii. Pesticide application should be applied during the dry season and avoid direct water application;

iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.

Rule: *OAR 340-041, OAR 340-012, OAR 340-041-0033*
Justification: *Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

13) **Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50 foot buffer to waters of the state, unless proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.
Rule: *OAR 340-041, OAR 340-012*
Justification: *Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011.
Rule: *OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040*
Justification: *DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.*

FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS

15) **Fish protection/ Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW, NMFS and/or the USFW as appropriate, and approved by DSL when applicable.
Rule: *OAR 340-041-0011*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

16) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.
Rule: *OAR 340-041-0016; OAR 340-041-0028*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

17) **Isolation of in-water work areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.
Rule: *OAR 340-041, OAR 340-012, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.
Rule: *OAR 340-041, OAR 340-012*
Justification: *DEQ must ensure that pollution does not enter waterways*.

19) **Turbidity**: The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below:

    a. **Monitoring**: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ**.

        i. **Representative Background Point**: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.

        ii. **Compliance Point:** The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet down-current from the disturbance at approximately mid-depth of the waterbody

and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

b. **Compliance**: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances are allowed as followed:

MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*	
TURBIDITY LEVEL	***Restrictions to Duration of Activity***
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

c. **Reporting**:
   i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs which must include: calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; and location; date; time; and tidal stage (if applicable) for each reading.

   ii. A narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.

   iii. Keep records on file for the duration of the permit cycle.

d. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless accepted in writing by DEQ:

   i. Sequence/Phasing of work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances.

   ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as 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 the load, or using a closed-lipped environmental bucket must be implemented;

iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;

iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ; and

v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

Rule: *OAR 340-041-0036, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

20) **Post Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including construction, operation, and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).
Rule: *ORS 468B.050, OAR 340-045, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

21) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the applicant or the entity listed in the approved post-construction stormwater management plan.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.
Rule: *OAR 340-041, OAR 340-012, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.
Rule: *OAR 340-041, OAR 340-012*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.*

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at: http://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf the Applicant 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.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.*

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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

13.2) Projects that propose permanent fill in adjacent wetlands are denied certification.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Water adjacent wetlands provide water quality benefits.*

13.3) To apply for certification for a project without bioengineering, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

14.2) To apply for certification for a project without bioengineering, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

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 30, 31, and 40 at: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=68746.

16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.
Rule: *OAR 340-041-0053(b)(A), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.
Rule: *OAR 340-041-0053(b)(A), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.
a. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
b. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 20 – Response Operations for Oil and Hazardous Waste:

20.1) Coordination with DEQ's Emergency Response program is required. See: http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx.
Rule: *OAR 340-142-0130(3), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 22 – Removal of Vessels:

22.1) Coordination with DEQ's Emergency Response program is required. See:

http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.*

NWP 31 – Maintenance of Existing Flood Control Facilities:

31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.
Rule: *OAR 340-041-0028, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the Applicant is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: DEQ Erosion and Sediment Control Manual
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

38.2) Discharge to waters of the state 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 Contaminants of Concern (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 Applicant performing the MET.
iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: http://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx) or Solid Waste (see: http://www.oregon.gov/deq/mm/swpermits/Pages/Solid-Waste-Disposal-Sites-and-Landfill.aspx).
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 41 - Reshaping Existing Drainage Ditches:

41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

41.2) Following authorized work, the Applicant 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.
Rule: *OAR 340-041-0004(5)(a)*
Justification: *Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

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.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx).
Rule: *OAR 340-041-0033, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.*

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied expedited certification:
a. In-stream stormwater facilities;
b. Discharge outfalls not subject to an MS4 NPDES permit; and,
c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.*

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.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf), the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.*

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied expedited certification.
Rule: *OAR 340-045-0033, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.*

44.2) To apply for certification for a project without an NPDES permit, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways*.

44.3) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: https://www.dfw.state.or.us/lands/inwater/
Rule: *OAR 340-041-0011*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition D.1 must be applied.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways*

NWP 53 – Removal of Low-Head Dams:

53.1) Projects that do *not* go through a PSET review if sediments are being dispersed are denied certification.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.*

53.2) To apply for certification for a project without a PSET, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.*

NWP 54 – Living Shorelines:

54.1) 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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.*

NWP 58 – Utility Lines:

58.1) 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 1-800-452-0311.

c. 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.

d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Rule: *OAR 340-142-0030, OAR 340-142-0040(1)*
Justification: *Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.*

58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways*

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Delia Negru, at 503-593-2493, by email at delia.negru@deq.oregon.gov, or at the address on this letterhead.

Sincerely,

Theresa Burcsu,
Water Quality Manager
Northwest Region

ec: Trey Fraley, USACE
Melinda Butterfield, DSL
Anita Smyth, Winterbrook Planning
Tim Brooks, Winterbrook Planning

State of Oregon
DEQ Department of Environmental Quality

401 Water Quality Certification Turbidity Monitoring Report

Project Name:	USACE Project #	DSL Project #

Name of Inspector(s):	Turbidimeter Model:	Calibration Standard Type (Circle One) Formazin Solution or Gelex	Calibration Standard Expiration Date:

Sampling Date:	Calibration Values:	*Upstream (Background) Point Location:	*Downstream (Compliance) Point Location:
	_____NTU (Standard) = _____NTU (Reading) _____NTU (Standard) = _____NTU (Reading) _____NTU (Standard) = _____NTU (Reading)	Latitude: Longitude:	Latitude: Longitude:

In-Water Work Start Time:	In-Water Work End Time:	Description of In-Water Work:

Upstream Sample		Downstream Sample		Change in Turbidity (NTU)	Observation of waterbody		NOTES (Describe any modifications made to BMPs)
Time	Turbidity (NTU)	Time	Turbidity (NTU)		Tidal Stage	Note any plume, sheen, floatables, color	

State of Oregon
DEQ Department of Environmental Quality

401 Water Quality Certification Turbidity Monitoring Report

** Include a figure with the turbidity sampling forms showing the sampling locations.*

Turbidity: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

Monitoring: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two hour intervals each day during daylight hours when in-water work is being conducted, including while dewatering or work area isolation measures are in place. A properly calibrated turbidimeter is required unless another monitoring method is proposed and authorized by DEQ.

Representative Background Point: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet upcurrent of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring downcurrent at the compliance point described below.

Compliance Point: The must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet downcurrent from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*	
TURBIDITY LEVEL	***Restrictions to Duration of Activity***
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

Compliance: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as shown in the monitoring table shown here.

Reporting: The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs, kept on file for the duration of the permit cycle. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

BMPs to Minimize In-stream Turbidity: The Applicant must implement the following BMPs, unless otherwise accepted by DEQ:

i. Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as 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 the load, or using a closed-lipped environmental bucket must be implemented;
iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
iv. Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
Phone: (503) 231-6179 FAX: (503) 231-6195

Reply To: 01EOFW00- 2020-I-0525
File Name: Bull_run_treatment_improvement_prjt_LOC.docx
TS Number: 20-526
TAILS: 01EOFW00- 2020-I-0525

Alaina McCurdy, NEPA Coordinator, WIFIA
Water Infrastructure Division
Office of Wastewater Management
U.S. Environmental Protection Agency
Washington, D.C. 20460

Subject: Informal Consultation for the Portland Water Bureau Bull Run Treatment Program, Multnomah and Clackamas counties, Oregon (USFWS Number: 01EOFW00-2020-I-0525).

Dear Ms. McCurdy:

The Fish and Wildlife Service has reviewed your July 21, 2020, letter of determination and project description (electronic submittal) requesting informal consultation for the Portland Water Bureau Bull Run Treatment Program, Multnomah and Clackamas counties, Oregon, (proposed project). The U.S. Environmental Protection Agency (EPA), Office of Water Management is funding the project which involves upgrades to the existing Improved Corrosion Control Treatment Facility, construction of a new Filtration Facility, and the installation of new transmission and distribution pipelines. The EPA has made a determination that the project "may affect, is not likely to adversely affect" the threatened streaked horned lark (*Eremophila alpestris strigata*) and threatened Nelson's checker-mallow (*Sidalcea nelsoniana*). Our review and comments regarding these determinations are provided pursuant to section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*.).

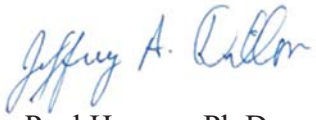
The proposed project involves improvements to the existing Corrosion Control facility to further reduce lead in the water; construction of a new 145 million gallon per day filtration system and associated on-site buildings; construct approximately nine miles of new welded steel pipeline and two large diameter transmission pipelines to connect the proposed filtration facility to the existing system. Surveys were conducted for both species in the appropriate habitats but neither were observed.

The Fish and Wildlife Service concurs with the EPA's determination that the proposed project "may affect, is not likely to adversely affect" the streaked horned lark and Nelson's checker-mallow for the following reasons: for steaked horned lark, 1) although foraging habitat may occur in the eastern edge of the Willamette Valley near Gresham, it is unlikely larks will occur within the action area; and 2) the majority of the proposed project is within existing facilities or non-habitat and the remaining open areas have been regularly and intensely managed for agriculture, primarily for nursery stock. For the Nelson's checker-mallow, 1) effects from pipeline construction where potential habitat occurs will be avoided through the directional boring, and 2) roadside vegetation and adjacent areas have been heavily managed and therefore habitat is extremely limited. Therefore, the affects to streaked horned lark and Nelson's checker-mallow are anticipated to be insignificant and discountable.

This concludes informal consultation pursuant to section 7(a) (2) and 7(c) of the Endangered Species Act of 1973, as amended. If information reveals effects of the action may affect listed species or critical habitat in a manner or to an extent not considered in this consultation; the action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in this consultation; and/or, new species is listed or critical habitat is proposed that may be affected by this action, EPA would need to re-initiate consultation.

If you have any further questions regarding this project, please contact David Leal of my staff at (503) 231-6179.

Sincerely,



Acting for Paul Henson, Ph.D.
State Supervisor

US Army Corps of Engineers®
Portland District

Compliance Certification

1. **Permit Number:** NWP-2024-102
2. **Permittee Name:** Portland Water Bureau
3. **County Location:** Multnomah County

Upon completing the activity authorized by the permit, please complete the sections below, sign and date this certification, and return it to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch. The certification can be submitted by email at cenwp.notify@usace.army.mil or by regular mail at the following address:

U.S. Army Corps of Engineers
CENWP-OD-GL
P.O. Box 2946
Portland, OR 97208-2946

4. **Corps-required Compensatory Mitigation (see permit special conditions):**
   a. Mitigation Bank / In-lieu Fee Credit Transaction Documents:
      ☐ Not Applicable ☐ Submitted ☐ Enclosed

   b. Permittee-responsible mitigation (e.g., construction and plantings) has been constructed (not including future monitoring). As-built report:
      ☐ Not Applicable ☐ Submitted ☐ Enclosed

5. **Endangered Species Act – Standard Local Operating Procedures (SLOPES)** (see permit special conditions):
   a. SLOPES Action Completion Report:
      ☐ Not Applicable ☐ Submitted ☐ Enclosed

   b. SLOPES Fish Salvage Report:
      ☐ Not Applicable ☐ Submitted ☐ Enclosed

   c. SLOPES Site Restoration / Compensatory Mitigation Report:
      ☐ Not Applicable ☐ Submitted ☐ Enclosed

I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

Signature of Permittee **Date**

Oregon
Tina Kotek, Governor

Department of Environmental Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5263
FAX (503) 229-6945
TTY 711

July 30, 2024

Bonita Oswald
Portland Water Bureau
400 SW 6th Ave
Portland, OR 97205

RE: 401 Water Quality Certification Approval for 2024-102, Portland Water Bureau Bull Run Filtration Project.

The US Army Corps of Engineers (USACE) has determined that your project will be authorized under Nationwide Permit (NWP) category #58. As described in the application package received and reviewed by the Oregon Department of Environmental Quality (DEQ), the project qualifies for the expedited 401 Water Quality Certification (WQC), subject to the conditions outlined below. If you cannot meet all conditions of this 401 WQC, you may apply for a standard individual certification. A standard individual certification will require additional information, a public notice, and a higher review fee.

Certification Decision: Based on information provided by the USACE and the Applicant, DEQ has determined that implementation eligible activities under the proposed NWP will be consistent with water quality requirements including applicable provisions of Sections 301, 302, 303, 306, and 307 of the federal Clean Water Act, state water quality standards set forth in Oregon Administrative Rules Chapter 340 Division 41, and other appropriate requirements of state law, provided the following conditions are incorporated into the federal permit and strictly adhered to by the Applicant.

Duration of Certificate: This 401 WQC for impacts to waters, including dredge and fill activities, is valid for the duration of the USACE Section 404 permit. A new 401 WQC must be requested with any modification of the USACE 404 permit.

In addition to all USACE national and regional permit conditions, the following 401 WQC conditions apply to all NWP categories that qualify for the Nationwide 401 WQC.

401 GENERAL CERTIFICATION CONDITIONS

1) **Responsible parties:** This 401 WQC applies to the Applicant. The Applicant is responsible for the work of its contractors and sub-contractors, as well as any other entity that performs work related to this WQC.
Rule: *40 CFR 121, OAR 340-048-0015*
Justification: *DEQ must be aware of responsible parties to ensure compliance.*

2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Permit Application and additional application materials (hereafter "the permit application materials"), unless otherwise authorized by DEQ. If the project is operated in a manner not

consistent with the project description contained in the permit application materials, the Applicant is not in compliance with this 401 WQC and may be subject to enforcement.
Rule: *OAR 340-048-0015*
Justification: *To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*

3) **401 WQC on Site:** A copy of this 401 WQC must be kept on the job site and readily available for reference by the Applicant and its contractors and subcontractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other state and local government inspectors.
Rule: *OAR 340-012*
Justification: *All parties must be aware of and comply with the 401 WQC, including on-site contractors.*

4) **Project Changes:** DEQ may modify or revoke this 401 WQC, in accordance with OAR 340-048-0050, if the project changes or project activities are having an adverse impact on state water quality or beneficial uses, or if the Applicant is otherwise in violation of the conditions of this certification.
Rule: *OAR 340-048-0050*
Justification: *To ensure the project will comply with water quality standards, DEQ must understand all work involved in the construction and operation of the project.*

5) **Land Use Compatibility Statement:** In accordance with OAR 340-048-0020(2) (i), each Applicant 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 Section 11 of the 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.

In lieu of submitting the appropriate section of the USACE & Department of State Lands (DSL) Joint Permit Application, the Applicant may use DEQ's Land Use Compatibility Statement form found at: http://www.oregon.gov/deq/FilterDocs/lucs.pdf
Rule: *OAR 340-048-0020(2) (i), OAR 340-018*
Justification: *DEQ must ensure compliance with water quality land use laws at the local level.*

6) **Access:** The Applicant and its contractors must allow DEQ access to the project site with or without prior notice, including staging areas, and mitigation sites to monitor compliance with these 401 WQC conditions, including:

   a. Access to any records, logs, and reports that must be kept under the conditions of this 401 WQC;

   b. To inspect best management practices (BMPs), monitoring or equipment or methods; and

   c. To collect samples or monitor any discharge of pollutants.

Rule: *OAR 340-012*
Justification: *DEQ must inspect facilities for compliance with all state rules and laws.*

7) Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.
Rule: *OAR 340-012*
Justification: *If the project is not being constructed or operated as proposed, it may not be consistent with water quality requirements.*

FOR PROJECTS THAT PROPOSE CONSTRUCTION, THE FOLLOWING GENERAL CONDITIONS APPLY

8) **Erosion and Sediment Control**: During construction, erosion control measures must be implemented to prevent or control movement of soil into waters of the state. The Applicant is required to develop and implement an effective erosion and sediment control plan. A project that disturbs more than one acre may be required to obtain a National Pollutant Discharge Elimination System (NPDES) 1200-C construction stormwater general permit. Contact the DEQ Stormwater Program for more information at: https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Construction.aspx

In addition, the Applicant must:

a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.

b. Prohibit erosion of stockpiles. Deploy compost berms, impervious materials, or other effective methods during rain events or when stockpiles are not moved or reshaped for more than 48 hours.

c. Inspect erosion control measures daily and maintain erosion control measures as often necessary to ensure the continued effectiveness of measures. Erosion control measures must remain in place until all exposed soil is stabilized;

i. If monitoring or inspection shows that the erosion and sediment controls are ineffective, Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.

ii. If sediment has reached 1/3 of the exposed height of a sediment or erosion control, Applicant must remove the sediment to its original contour.

d. Use removable pads or mats to prevent soil compaction at all construction access points through, and staging areas in, riparian or wetland areas to prevent soil compaction, unless otherwise authorized by DEQ.

e. Flag or fence off wetlands not specifically authorized to be impacted to protect from disturbance and/or erosion.

f. Place dredged or other excavated material on upland areas with stable slopes to prevent materials from eroding back into waterways or wetlands.

g. Place clean aggregate at all construction entrances, and utilize other BMPs, including, but not limited to as truck or wheel washes, when earth moving equipment is leaving the site and traveling on paved surfaces. The tracking of sediment off site by vehicles is prohibited.

Rule: *OAR 340-041-0007(8), ORS 468B.050, CWA Section 402, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

9) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris where they could enter waters of the state, including wetlands (wetlands are waters of the state). This includes, but is not limited to: 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.

The following specific requirements apply:

a. Cure concrete, cement, or grout for at least 24 hours before any contact with flowing waters;

b. Use only clean fill, free of waste and polluted substances;

c. Employ all practicable controls to prevent discharges of spills of harmful materials to surface or groundwater;

d. Maintain at the project construction site, and deploy as necessary, an adequate supply of materials needed to contain deleterious materials during a weather event;

e. Remove all foreign materials, refuse, and waste from the project area

Rule: *OAR 340-041-0007(8), ORS 468B.050, CWA Section 402*
Justification: *DEQ must ensure that pollution does not enter waterways.*

10) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat directly or result in potential discharges.
Rule: *ORS 468B.025(1)(a)*
Justification: *DEQ must ensure that pollution does not enter waterways.*

11) **Spill & Incident Reporting:**

a. In the event that deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the discharge must be promptly reported to the Oregon Emergency Response Service (OERS, 1-800-452-0311) within 24 hours. Containment and cleanup must begin immediately and be completed as soon as possible.

b. If the project operations cause a water quality problem that results in distressed or dying fish, the operator must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW, NMFS, and US Fish and Wildlife Service (USFW).

Rule: *ORS 466.645(1); OAR 340-142-0030(1)(b)(B), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways and must be protective of beneficial uses, including fish.*

12) **Vegetation Protection and Site Restoration:**

a. The Applicant must protect riparian, wetland, and shoreline vegetation in the authorized project area from disturbance through one or more of the following:

i. Minimization of project and impact footprint;

ii. Designation of staging areas and access points in open, upland areas;

iii. Fencing and other barriers demarking construction areas; and

iv. Use of alternative equipment (e.g., spider hoe or crane).

b. If authorized work results in vegetative disturbance and the disturbance has not been accounted for in planned mitigation actions, the Applicant must successfully reestablish vegetation to a degree of function equivalent or better than before the disturbance.

c. Pesticides (including herbicides) and fertilizers must be applied per manufacturer's instructions by a professionally licensed applicator. If chemical treatment is necessary, the Applicant is responsible for ensuring that pesticide application laws, including with the NPDES System 2300-A general permit, are met. Please review the information on the following website for more information: https://www.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx

i. For pesticide application within stormwater treatment facilities or within 150 feet of waters of the state, the Applicant must adopt an Integrated Pest Management (IPM) plan that describes pest prevention, monitoring and control techniques with a focus on prevention of inputs to waters of the state, or coverage under an NPDES permit, if required.

ii. Pesticide application should be applied during the dry season and avoid direct water application;

iii. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.

Rule: *OAR 340-041, OAR 340-012, OAR 340-041-0033*
Justification: *Riparian, wetland, and shoreline vegetation help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

13) **Buffers:** The Applicant shall avoid and protect from harm, all wetlands and provide a 50 foot buffer to waters of the state, unless proposed, necessary, and approved as part of the project. If a local jurisdiction has a more stringent buffer requirement, that requirement will take the place of this certification requirement.
Rule: *OAR 340-041, OAR 340-012*
Justification: *Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway, and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

14) **Previously Contaminated Soil and Groundwater:** If any contaminated soil or groundwater is encountered, it must be handled and disposed of in accordance with the soil and groundwater management plan for the site, as well as local, state and federal regulations. The Applicant must notify the Environmental Cleanup Section of DEQ at 1-800-452-4011.
Rule: *OAR 340-041, OAR 340-012, OAR 340-122, OAR 340-040*
Justification: *DEQ must ensure that pollution does not enter waterways. As sediments are disturbed, pollutants could become redistributed.*

FOR PROJECTS THAT PROPOSE IN-STREAM WORK IN JURISDICTIONAL WATERS

15) **Fish protection/ Oregon Department of Fish and Wildlife timing:** The Applicant must perform in-water work only within the ODFW preferred time window as specified in the *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*, or as authorized otherwise under a USACE permit and/or DSL removal/fill permit. Exceptions to the timing window must be recommended by ODFW, NMFS and/or the USFW as appropriate, and approved by DSL when applicable.
Rule: *OAR 340-041-0011*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

16) **Aquatic life movements:** Any activity that may disrupt the movement of aquatic life living in the water body, including those species that normally migrate through the area, is prohibited. The Applicant must provide unobstructed fish passage at all times during any authorized activity, unless otherwise approved in the approved application.
Rule: *OAR 340-041-0016; OAR 340-041-0028*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

17) **Isolation of in-water work areas:** The Applicant must isolate in-water work areas from the active flowing stream, unless otherwise authorized as part of the approved application, or authorized by DEQ.
Rule: *OAR 340-041, OAR 340-012, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

18) **Cessation of Work:** The Applicant must cease project operations under high-flow conditions that will result in inundation of the project area. Only efforts to avoid or minimize turbidity or other resource damage as a result of inundation of the exposed project area are allowed during high-flow conditions.
Rule: *OAR 340-041, OAR 340-012*
Justification: *DEQ must ensure that pollution does not enter waterways.*

19) **Turbidity**: The Applicant must implement BMPs to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidities is prohibited except as specifically provided below:

   a. **Monitoring**: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two-hour intervals each day when in-water work is being conducted. A properly calibrated turbidimeter is required **unless another monitoring method is proposed and authorized by DEQ**.

      i. **Representative Background Point**: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet up-current of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring down-current at the compliance point described below.

      ii. **Compliance Point:** The Applicant must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet down-current from the disturbance at approximately mid-depth of the waterbody

and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

b. **Compliance**: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances are allowed as followed:

MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*	
TURBIDITY LEVEL	***Restrictions to Duration of Activity***
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

c. **Reporting**:
   i. Record all turbidity monitoring required by subsections (a) and (b) above in daily logs which must include: calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; and location; date; time; and tidal stage (if applicable) for each reading.

   ii. A narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to regulatory agencies including DEQ, USACE, NMFS, USFWS, and ODFW upon request.

   iii. Keep records on file for the duration of the permit cycle.

d. **BMPs to Minimize In-stream Turbidity:** The Applicant must implement the following BMPs, unless accepted in writing by DEQ:

   i. Sequence/Phasing of work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances.

   ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as 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 the load, or using a closed-lipped environmental bucket must be implemented;

iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary at the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;

iv. Machinery may not be driven into the flowing channel, unless authorized in writing by DEQ; and

v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

vi. Containment measures such as silt curtains, geotextile fabric, and silt fences must be in place and properly maintained in order to minimize in-stream sediment suspension and resulting turbidity.

Rule: *OAR 340-041-0036, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

SPECIFIC CONDITIONS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

20) **Post Construction Stormwater Management:** For projects which propose new impervious surfaces or the redevelopment of existing surfaces, the Applicant must submit a post-construction stormwater management plan to DEQ. The plan must be reviewed and approved prior to construction to ensure compliance with water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including construction, operation, and maintenance. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ in writing.

In lieu of a complete stormwater management plan, the Applicant may submit documentation of acceptance of the stormwater into a DEQ permitted NPDES Phase I Municipal Separate Storm Sewer System (MS4).
Rule: *ORS 468B.050, OAR 340-045, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

21) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the applicant or the entity listed in the approved post-construction stormwater management plan.

Maintenance of stormwater treatment facilities subject to an MS4 permit is regulated by the permit.
Rule: *OAR 340-041, OAR 340-012, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways.*

22) **Corrective Action May Be Required:** DEQ retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.
Rule: *OAR 340-041, OAR 340-012*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.*

7.2) If an Applicant cannot obtain an NPDES permit or submit an approvable stormwater management plan per DEQ's Guidelines found at: http://www.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf the Applicant 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.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048, OAR 340-045*
Justification: *DEQ must ensure that pollution does not enter waterways. Untreated stormwater is considered pollution.*

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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

13.2) Projects that propose permanent fill in adjacent wetlands are denied certification.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Water adjacent wetlands provide water quality benefits.*

13.3) To apply for certification for a project without bioengineering, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

14.2) To apply for certification for a project without bioengineering, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion upstream and downstream of the structure.*

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 30, 31, and 40 at: https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=68746.

16.1) Discharge of return water from contaminated dredged material that exceeds a chronic or acute toxicity water quality standard is prohibited.
Rule: *OAR 340-041-0053(b)(A), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.
Rule: *OAR 340-041-0053(b)(A), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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.
a. DEQ must approve the list of CoCs and analytical method prior to the Applicant performing the MET.
b. DEQ must review the results and provide approval of discharge from return water, in writing, prior to dredging.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 20 – Response Operations for Oil and Hazardous Waste:

20.1) Coordination with DEQ's Emergency Response program is required. See: http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx.
Rule: *OAR 340-142-0130(3), OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 22 – Removal of Vessels:

22.1) Coordination with DEQ's Emergency Response program is required. See:

http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/Emergency-Response.aspx.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Vessels may contain various fuels, lubricants, and other possible sources of pollution.*

NWP 31 – Maintenance of Existing Flood Control Facilities:

31.1) Projects in streams with temperature TMDLs which result in a net reduction of riparian shade are prohibited.
Rule: *OAR 340-041-0028, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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, unless otherwise authorized by DEQ.

a. For in-water isolation measures, the Applicant is referred to Appendix D of DEQ's Oregon Erosion and Sediment Control Manual, April 2005 (or most current version), at: DEQ Erosion and Sediment Control Manual
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

38.2) Discharge to waters of the state 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 Contaminants of Concern (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 Applicant performing the MET.
iii. DEQ must review the results and provide approval of discharge from dewatering and return water in writing prior to dredging.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

38.3) Dredged material must be disposed of in compliance with DEQ Rules governing Hazardous Waste (see: http://www.oregon.gov/deq/Hazards-and-Cleanup/hw/Pages/default.aspx) or Solid Waste (see: http://www.oregon.gov/deq/mm/swpermits/Pages/Solid-Waste-Disposal-Sites-and-Landfill.aspx).
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

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

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

NWP 41 - Reshaping Existing Drainage Ditches:

41.1) To the extent practicable, the Applicant must work from only one bank in order to minimize disturbance to existing vegetation, preferably the bank with the least existing vegetation;
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways.*

41.2) Following authorized work, the Applicant 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.
Rule: *OAR 340-041-0004(5)(a)*
Justification: *Riparian, wetland, and shoreline buffers help ensure excess sediment does not enter a waterway and helps offset potential temperature impacts. DEQ must ensure that pollution does not enter waterways.*

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.oregon.gov/deq/wq/wqpermits/Pages/Pesticide.aspx).
Rule: *OAR 340-041-0033, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways, including excess pesticides and fertilizers.*

NWP 43 – Stormwater Management Facilities:

43.1) Projects that propose the following elements are denied expedited certification:
a. In-stream stormwater facilities;
b. Discharge outfalls not subject to an MS4 NPDES permit; and,
c. Proposals that do not demonstrate pollutant removal to meet water quality standards prior to discharge to waters of the state.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.*

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.oregon.gov/deq/FilterDocs/401wqcertPostCon.pdf), the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways; stormwater is considered a pollutant.*

NWP 44 – Mining Activities:

44.1) Projects that do not obtain an NPDES 700-PM or Individual permit are denied expedited certification.
Rule: *OAR 340-045-0033, OAR 340-041*
Justification: *DEQ must ensure that pollution does not enter waterways. Excess turbidity can be considered pollution.*

44.2) To apply for certification for a project without an NPDES permit, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways.*

44.3) The State of Oregon requires an In-Water Blasting Permit be obtained per OAR, 635-425-0000. Permittee is advised to contact the nearest ODFW office for further information at: https://www.dfw.state.or.us/lands/inwater/
Rule: *OAR 340-041-0011*
Justification: *DEQ must be protective of all water quality standards, including beneficial uses such as fish.*

NWP 51 – Land-Based Renewable Energy Generation Facilities:

51.1) For associated utility lines with directionally-bored stream or wetland crossings proposed, condition D.1 must be applied.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways*

NWP 53 – Removal of Low-Head Dams:

53.1) Projects that do *not* go through a PSET review if sediments are being dispersed are denied certification.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.*

53.2) To apply for certification for a project without a PSET, the Applicant 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.
Rule: *OAR 340-041-0059*
Justification: *DEQ must ensure that pollution does not enter waterways. Sediments can be a carrier of contaminants.*

NWP 54 – Living Shorelines:

54.1) 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 of protection.
Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways. Hard armoring can increase erosion in the system.*

NWP 58 – Utility Lines:

58.1) 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 1-800-452-0311.

c. 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.

d. The Applicant must have a contingency plan in place prior to construction for the inadvertent return of drilling lubricant.

Rule: *OAR 340-142-0030, OAR 340-142-0040(1)*
Justification: *Drilling equipment and fluids that enter a waterbody would likely cause contamination of that waterbody.*

58.2) For proposals that include utility lines through wetlands, include anti-seep collars or equivalent technology to prevent draining the wetlands.

Rule: *OAR 340-041, OAR 340-012, OAR 340-048*
Justification: *DEQ must ensure that pollution does not enter waterways*

If the Applicant is dissatisfied with the conditions contained in this certification, a hearing may be requested. Such request must be made in writing to DEQ's Office of Compliance and Enforcement at 700 NE Multnomah St, Suite 600, Portland Oregon 97232, within 20 days of the mailing of this certification.

The DEQ hereby certifies that this project complies with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Delia Negru, at 503-593-2493, by email at delia.negru@deq.oregon.gov, or at the address on this letterhead.

Sincerely,

Theresa Burcsu,
Water Quality Manager
Northwest Region

ec: Trey Fraley, USACE
Melinda Butterfield, DSL
Anita Smyth, Winterbrook Planning
Tim Brooks, Winterbrook Planning

State of Oregon
DEQ Department of Environmental Quality

401 Water Quality Certification Turbidity Monitoring Report

Project Name:	USACE Project #	DSL Project #

Name of Inspector(s):	Turbidimeter Model:	Calibration Standard Type (Circle One) Formazin Solution or Gelex	Calibration Standard Expiration Date:

Sampling Date:	Calibration Values:	*Upstream (Background) Point Location:	*Downstream (Compliance) Point Location:
	_____NTU (Standard) = _____NTU (Reading) _____NTU (Standard) = _____NTU (Reading) _____NTU (Standard) = _____NTU (Reading)	Latitude: Longitude:	Latitude: Longitude:

In-Water Work Start Time:	In-Water Work End Time:	Description of In-Water Work:

Upstream Sample		Downstream Sample		Change in Turbidity (NTU)	Observation of waterbody		NOTES (Describe any modifications made to BMPs)
Time	Turbidity (NTU)	Time	Turbidity (NTU)		Tidal Stage	Note any plume, sheen, floatables, color	

401 Water Quality Certification Turbidity Monitoring Report

** Include a figure with the turbidity sampling forms showing the sampling locations.*

Turbidity: The Applicant must implement appropriate Best Management Practices (BMPs) to minimize turbidity during in-water work. Any activity that causes turbidity to exceed 10% above natural stream turbidity is prohibited except as specifically provided below:

Monitoring: Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur at two hour intervals each day during daylight hours when in-water work is being conducted, including while dewatering or work area isolation measures are in place. A properly calibrated turbidimeter is required unless another monitoring method is proposed and authorized by DEQ.

Representative Background Point: The Applicant must take and record a turbidity measurement every two hours during in-water work at an undisturbed area. A background location shall be established at a representative location approximately 100 feet upcurrent of the in water activity unless otherwise authorized by DEQ. The background turbidity, location, date, tidal stage (if applicable) and time must be recorded immediately prior to monitoring downcurrent at the compliance point described below.

Compliance Point: The must monitor every two hours. A compliance location shall be established at a representative location approximately 100 feet downcurrent from the disturbance at approximately mid-depth of the waterbody and within any visible plume. The turbidity, location, date, tidal stage (if applicable) and time must be recorded for each measurement.

MONITORING WITH A TURBIDIMETER *EVERY 2 HOURS*	
TURBIDITY LEVEL	***Restrictions to Duration of Activity***
0 to 4 NTU above background	No Restrictions
5 to 29 NTU above background	Work may continue maximum of 4 hours. If turbidity remains 5-29 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
30 to 49 NTU above background	Work may continue maximum of 2 hours. If turbidity remains 30-49 NTU above background, stop work and modify BMPs. Work may resume when NTU is 0-4 above background.
50 NTU or more above background	Stop work immediately and inform DEQ

Compliance: The Applicant must compare turbidity monitoring results from the compliance points to the representative background levels taken during each two – hour monitoring interval. Pursuant to OAR 340-041-0036, short term exceedances of the turbidity water quality standard are allowed as shown in the monitoring table shown here.

Reporting: The Applicant must record all turbidity monitoring required by subsections (a) and (b) above in daily logs, kept on file for the duration of the permit cycle. The daily logs must include calibration documentation; background NTUs; compliance point NTUs; comparison of the points in NTUs; location; date; time; and tidal stage (if applicable) for each reading. Additionally, a narrative must be prepared discussing all exceedances with subsequent monitoring, actions taken, and the effectiveness of the actions. Applicant must make available copies of daily logs for turbidity monitoring to DEQ, USACE, NMFS, USFWS, and ODFW upon request.

BMPs to Minimize In-stream Turbidity: The Applicant must implement the following BMPs, unless otherwise accepted by DEQ:

i. Sequence/Phasing of Work – The Applicant must schedule work activities so as to minimize in-water disturbance and duration of in-water disturbances;
ii. Bucket control - All in-stream digging passes by excavation machinery and placement of fill in-stream using a bucket must be completed so as to minimize turbidity. All practicable techniques such as 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 the load, or using a closed-lipped environmental bucket must be implemented;
iii. The Applicant must limit the number and location of stream-crossing events. Establish temporary crossing sites as necessary in the least sensitive areas and amend these crossing sites with clean gravel or other temporary methods as appropriate;
iv. Machinery may not be driven into the flowing channel, unless authorized by DEQ; and
v. Excavated material must be placed so that it is isolated from the water edge or wetlands, and not placed where it could re-enter waters of the state uncontrolled.

Multnomah County

LUP Hearings <lup-hearings@multco.us>

Applicant's First Open Record Period Submission -- T3-2022-16220

Zoee Powers <zpowers@radlerwhite.com> Mon, May 5, 2025 at 11:47 AM
To: LUP Hearings <lup-hearings@multco.us>
Cc: "Peters, David" <David.Peters@portlandoregon.gov>, Renee France <rfrance@radlerwhite.com>, Zoee Powers <zpowers@radlerwhite.com>

Multnomah County Staff,

At this link, please find the applicant's submissions into the record for the First Open Record Period of T3-2022-16220 on remand:

https://radlerwhite.sharefile.com/d-sc32887acc9964f03b16e192384a89def

I have personally endeavored to make sure these are all searchable, unlocked/editable, and of a proper size. I understand that in our last submission we missed recognizing that one of the documents was locked by an engineer's stamping procedure and it caused additional work for staff. Please let me know if you have that issue again and I will have the document corrected.

Thank you,

Zoee Lynn Powers

Partner

RADLER WHITE PARKS ALEXANDER LLP
ATTORNEYS AT LAW

Direct Telephone: 971.634.0215

E-Mail: zpowers@radlerwhite.com

Address: 111 SW Columbia Street, Suite 700, Portland, OR 97201

Website: www.radlerwhite.com

Pronouns: She/her

Work Hours: I work normal business hours all days except for Tuesdays. On Tuesdays, I work until 2:30 PM and then return around 7 PM. If you have an urgent matter on a Tuesday afternoon between 2:30 PM and 7 PM, please call my legal assistant, Brittany, at 971.634.0216. Brittany will be able to contact me.