



September 27, 2018

Board of County Commissioners
Clackamas County
Board of North Clackamas Parks and Recreation District

Members of the Board:

Approval of an Intergovernmental Agreement with Oak Lodge Water Services District (OLWSD) for the Boardman Wetland Project

Purpose/Outcomes	Allows NCPRD to form an agreement with OLWSD to partner on the development of the Boardman Wetland project. This Project will build a nature play area in the Jennings Lodge area, an underserved area within the District.
Dollar Amount and Fiscal Impact	NCPRD proposes to allocate approximately \$560,000 in SDC funds and \$385,000 in grant funds from Oregon State Parks.
Funding Source	Zone 2 System Development Charges (SDCs)
Duration	2 years from date of execution.
Previous Board Action	<ul style="list-style-type: none"> • <i>2/15/2018 NCPRD Board Meeting:</i> Approval of Resolution 2018-15 authorizing NCPRD to apply for grant funds to develop a nature play area at the site • <i>3/29/18 BCC Business Meeting:</i> Approval of Purchase and Sale Agreement with OLWSD for the Boardman Wetland Park site. • <i>9/6/18 BCC Business Meeting:</i> Approval of Assignment of IGA for Metro Nature in Neighborhoods grant from OLWSD to NCPRD.
Strategic Plan Alignment	<ul style="list-style-type: none"> • Build public trust through good government • Build a strong infrastructure • Ensure safe, healthy and secure communities
Contact Person	Scott Archer, NCPRD Director, 503-742-4421 Tonia Williamson, Natural Areas Coordinator, 503-742-4357

BACKGROUND:

North Clackamas Parks and Recreation District (NCPRD) is partnering with Oak Lodge Water Services District (OLWSD) on the development of the Boardman Wetland Project (Project). The Project is a new, nearly 6-acre site located between Boardman and Jennings Avenues. This project will bring a developed natural area including a boardwalk and nature play area to an underserved area of our District.

In March 2018, the Board approved the Purchase and Sale Agreement for the Boardman Wetland Project site. At that time, staff promised to return with a comprehensive Intergovernmental Agreement (IGA) that defined each partners' roles and responsibilities in regards to the Boardman Wetland Project. The IGA (Agreement) was written and negotiated by County Counsel and legal counsel for OLWSD.

Concurrently, NCPRD and OLWSD are transferring the ownership of the Boardman Wetland property from OLWSD to NCPRD pursuant to the terms in the Purchase and Sale Agreement. The Project has secured two grant awards, one from Metro's Nature in Neighborhoods program as well as one from the Oregon Parks and Recreation Department's Local Government Grant program. This Agreement allows the project to continue progress toward completion, with roles and responsibilities of both parties agreed upon.

County Counsel has reviewed the Agreement and is assisting NCPRD with the land transfer of the site from OLWSD to NCPRD ownership.

RECOMMENDATION:

Staff recommend the Board approve this Intergovernmental Agreement between North Clackamas Parks and Recreation District (NCPRD) and Oak Lodge Water Services District (OLWSD) and delegate authority to the BCS Director, Deputy Director or Designee to sign all documents necessary to effectuate the same.

ATTACHMENT:

Intergovernmental Agreement between North Clackamas Parks and Recreation District and Oak Lodge Water Services District for the Boardman Wetland Project

Respectfully submitted,

Scott Archer, Director
North Clackamas Parks and Recreation District

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into AS OF THE LAST DATE OF THE SIGNATURES INDICATED BELOW (the "Effective Date"), by and between Oak Lodge Water Services District ("OLWSD"), a consolidated sanitary and water district formed pursuant to ORS Chapters 264, 450, and 198, located at 14496 SE River Road, Oak Grove, Oregon 97267 and North Clackamas Parks and Recreation District ("NCPRD"), a county service district formed pursuant to ORS Chapter 451, located at 150 Beaver Creek Road, Oregon City, Oregon 97045.

RECITALS

WHEREAS, authority is conferred upon local governments under ORS 190.010 to enter into agreements for the performance of any and all functions and activities that a party to the agreement, its officers or agencies have authority to perform; and

WHEREAS, this Agreement establishes an agreement between NCPRD and OLWSD to partner on the development of the Boardman Wetland Complex in the vicinity of 17908 SE Addie St. in the Jennings Lodge area of Clackamas County ("the Property"), see Exhibit A; and

WHEREAS, OLWSD is the current owner and manager of approximately 5.8 acres within the Property, and is in the process of selling the Property to NCPRD following the Purchase and Sale Agreement, see Exhibit B; and

WHEREAS, OLWSD is the current lead for the planning, design, permitting, and implementation of a project including a sewer lines replacement, educational area, boardwalk, natural area restoration, parking lot, wetland and nature play, known as the Boardman Wetland Project ("the Project"), see Exhibit C; and

WHEREAS, OLWSD has been awarded and is managing the Metro Nature in Neighborhoods (NIN) grant helping fund a portion of the Project; and

WHEREAS, NCPRD has been participating as a Project partner and as a member of the OLWSD Boardman Wetland Complex Project Stakeholder Group led by OLWSD and contributing comments and review of the Project and designs; and

WHEREAS, NCPRD submitted a Local Government Grant application to fund the nature play elements of the project to Oregon Parks and Recreation Department (OPRD); and

WHEREAS, following the Purchase and Sale Agreement, if NCPRD is not awarded the OPRD grant and NCPRD does not have an alternate funding source to construct the nature play area portion of the project, NCPRD will notify OLWSD of such circumstances, and Boardman A will be conveyed back to OLWSD; and

NOW, THEREFORE, IT IS AGREED BY THE PARTIES AS FOLLOWS:

1. **Term.** This Agreement shall be effective upon the date of execution of the last party to sign and shall expire upon the earlier occurrence of either: the expiration of the construction contract warranty period referenced in this Agreement, or upon early termination described under Section 6 of this Agreement.

2. **Obligation of OLWSD.**

- A. OLWSD agrees to continue to manage the Project through construction and the construction warranty period with NCPRD as Project partner. OLWSD agrees to list NCPRD as additionally insured on the construction contract insurance documents.
- B. OLWSD agrees to partner with NCPRD to complete the permits and designs for the proposed Project (not including final permits and designs for the nature play). OLWSD will allow NCPRD to review Project designs and the two agencies will agree upon final designs (excluding the sewer line repair of which OLWSD will finalize independently) and/or change orders, submittals that do not match the final design set. These Project designs will meet NCPRD sustainable design Best Management Practices (BMP) with the goal of decreasing long term maintenance costs.
- C. OLWSD agrees to lead the implementation of the Project including the nature play area if the OPRD Grant is awarded to NCPRD.
- D. OLWSD will provide support, including Project construction invoices to NCPRD if the OPRD Grant is awarded so that NCPRD can complete grant reports and reimbursement requests to OPRD.
- E. If the OPRD grant for the nature play area is not awarded to NCPRD, OLWSD will give NCPRD 90 days to identify an alternate funding source to construct the nature play area, and if NCPRD is unable to do so, NCPRD will immediately convey Boardman A back to OLWSD and NCPRD will reimburse OLWSD for the actual costs OLWSD incurred for the nature play area planning and design consultant fees within 60 days. OLWSD shall be under no obligation to continue work on the nature play area during the 90-day period that an alternative funding source is sought. If NCPRD requests in writing for OLWSD to continue work on the nature play area during this 90-day period, then NCPRD shall additionally reimburse OLWSD for all costs incurred during those 90-days. The remaining Boardman B property will be sold to NCPRD for public access and recreational purposes. If the OPRD grant is awarded, OLWSD agrees to work with NCPRD to sell Boardman A and Boardman B as outlined in the Purchase and Sale agreement and within this Agreement.
- F. OLWSD will work with Metro and NCPRD to transfer the Project Metro NIN grant agreement to NCPRD.
- G. OLWSD will provide support, including project construction invoices to NCPRD for the Metro NIN Grant so that NCPRD can complete grant reports and reimbursement requests to Metro.
- H. At either OLWSD or NCPRD's request, the other party shall provide the requesting party with paper or an electronic version of all documents, engineering designs, warranties, and other materials directly related to the Project that have been produced or recorded. The Parties are not obligated to produce materials in electronic media if the materials do not already exist in electronic media.
- I. OLWSD will continue to be responsible for all man-made storm and sewer conveyance systems located on the Boardman Wetland Site and shall be allowed reasonable access to such storm and sewer conveyance systems in perpetuity, with appropriate easements. All other new capital investments developed during the Project will be transferred to NCPRD.

3. **Obligation of NCPRD.**

- A. NCPRD agrees to purchase and receive the Boardman Wetland site from OLWSD as outlined in the Purchase and Sale Agreement.
- B. NCPRD agrees to review Project designs and the two agencies will agree upon final designs (excluding the sewer line repair of which OLWSD will finalize independently) and/or change orders, submittals that do not match the final design set. These Project designs will meet NCPRD sustainable design BMP's with the goal of decreasing long term maintenance costs.
- C. NCPRD submitted a Local Government Grant proposal for the Project to OPRD. If awarded, NCPRD agrees to manage the grant and comply with all grant agreement requirements.
- D. If OPRD does not award the grant for the Project, NCPRD will provide immediate notice to OLWSD. NCPRD will make a good faith effort to determine other available revenue sources to fund its purchase of the Boardman A site and fund the design and construction costs.
- E. If NCPRD cannot determine sufficient revenue sources within 90 days of learning that the OPRD grant application was denied funding of the nature play area portion of the Project, NCPRD will notify OLWSD of such circumstances and will convey Boardman A back to OLWSD. NCPRD will reimburse OLWSD for the costs OLWSD incurred for the nature play area planning and design. OLWSD shall be under no obligation to continue work on the nature play area during the 90-day period that an alternative funding source is sought. If NCPRD requests in writing for OLWSD to continue work on the nature play area during this 90-day period, then NCPRD shall additionally reimburse OLWSD for all costs incurred during those 90-days. If the OPRD grant is awarded, OLWSD agrees to sell Boardman A and Boardman B as outlined in the Purchase and Sale Agreement.
- F. NCPRD agrees to take necessary actions with OLWSD and Metro to transfer the Metro Nature in Neighborhoods grant agreement to NCPRD. NCPRD agrees to manage the grant and comply with all grant requirements.
- G. NCPRD agrees to reimburse OLWSD for the nature play area portion of construction invoices described in Section 5(B) of this Agreement. The Parties anticipate that the funding for reimbursement will come from ORPD, Metro, and NCPRD System Development Charges. NCPRD agrees to reimburse OLWSD within sixty (60) days of receipt of invoice.
- H. NCPRD shall be listed as additionally insured on the construction contract insurance documents.
- I. NCPRD shall begin management of the site including maintaining, securing, and operating the Property upon project close-out. For those elements subject to the construction contract warranty, OLWSD will cooperate with NCPRD to address any warranty claims or issues during the warranty period. NCPRD will become responsible for all new capital investments developed during the Project upon project close-out.

4. **Contacts**

A. NCPRD

Scott Archer
NCPRD Director
150 Beavercreek Road
Oregon City, OR 97045
503-742-4421
sarcher@NCPRD.com

B. OLWSD

Sarah Jo Chaplen
General Manager
14496 SE River Road
Oak Grove, Oregon 97267
503-353-4200
sarahjo@olwsd.org

5. **Work Plan and Scheduling of Work.**

- A. OLWSD will manage the Project and intends to complete the Work by May 2019. NCPRD acknowledges that said schedule is dependent on many conditions and may be subject to change. OLWSD will discuss any changes in the schedule with NCPRD prior to amending the construction contract.
- B. Nothing herein shall prevent the parties from meeting to mutually discuss the Project. Each party shall use best efforts to coordinate with the other to minimize conflicts. Costs of the construction elements focused on the nature play area are estimated to be \$845,000. No adjustment shall be made which obligates NCPRD to fund the Project or the costs of the portion of the construction elements focused on the nature play area, parking, etc., in excess of \$845,000 plus the remaining Metro grant funding (\$301,509 as of September 2018). NCPRD acknowledges that the final cost is dependent on many conditions and may be subject to change (e.g. increased construction costs due to unforeseen circumstances). OLWSD will provide prompt notice to NCPRD of any changes in the cost so that NCPRD can determine a source of contingency funding. NCPRD intends to use various funding sources to reimburse OLWSD, including OPRD and Metro grant funding and NCPRD SDC's.
- C. Any proposed change to designs or specifications must be approved by both Parties, including change orders, extensions, or changes to unit prices that affect Project costs following the execution of the Project.

6. Early Termination of Agreement

- A. NCPRD and OLWSD, by mutual written agreement, may terminate this Agreement at any time.
- B. Either NCPRD or OLWSD may terminate this Agreement in the event of a breach of the Agreement by the other party. Prior to such termination, however, the party seeking the termination shall give the other party written notice of the breach and of the party's intent to terminate. If the breaching party has not cured the breach to the reasonable satisfaction of the nonbreaching party within fifteen (15) days of deemed or actual receipt of the notice, then the party giving notice may terminate the Agreement at any time thereafter by giving written notice of termination stating the effective date of the termination.

- 7. **Indemnification.** Each party ("the Indemnifying Party") agrees to indemnify, save harmless, and defend the other ("the Indemnified Party"), its officers, commissioners, agents, volunteers, and employees from and against all costs, losses, damages, claims, or actions and all expenses incidental to the investigation and defense thereof (excluding legal and other professional fees and expenses) arising out of or based upon damages or injuries to persons or property, including death, to the extent that such liabilities result from the negligent or willful acts of the Indemnifying Party or the Indemnifying Party's officers, owners, employees, agents, volunteers, subcontractors, or anyone over which the Indemnifying Party has a right to control. The Indemnified Party shall give prompt notice of any such claim and the Indemnifying Party shall have the right to control and direct the investigation, preparation, action, and settlement of each claim. This indemnification provision shall not apply to either party's liability to its employees under applicable Worker's Compensation laws or be deemed a waiver of any defense to which either party may be entitled under applicable Worker's Compensation laws.
- 8. **Oregon Law and Forum.** This Agreement shall be construed according to the laws of the State of Oregon, without giving effect to the conflict of law provisions thereof. Venue for any claim or legal action arising out of, or in connection with, this Agreement or the project work shall be in the Clackamas County Circuit Court.
- 9. **Severability.** If any provision of this Agreement is found to be unconstitutional, illegal, or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken. The Court or other authorized body finding such provision unconstitutional, illegal or unenforceable shall construe this Agreement without such provision to give effect to the maximum extent possible the intentions of the parties.
- 10. **Integration.** This Agreement contains the entire agreement between NCPRD and OLWSD and supersedes all prior written or oral discussions or agreements between the parties with respect to the subject matter of this Agreement.
- 11. **Amendments.** NCPRD and OLWSD may amend this Agreement at any time only by written amendment signed by both parties.
- 12. **Waiver.** NCPRD and OLWSD shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS HEREOF, the parties have executed this Agreement by the date set forth opposite their names below.

**North Clackamas Parks and Recreation
District**

Chair

Date

Oak Lodge Water Services District

Nancy Hill

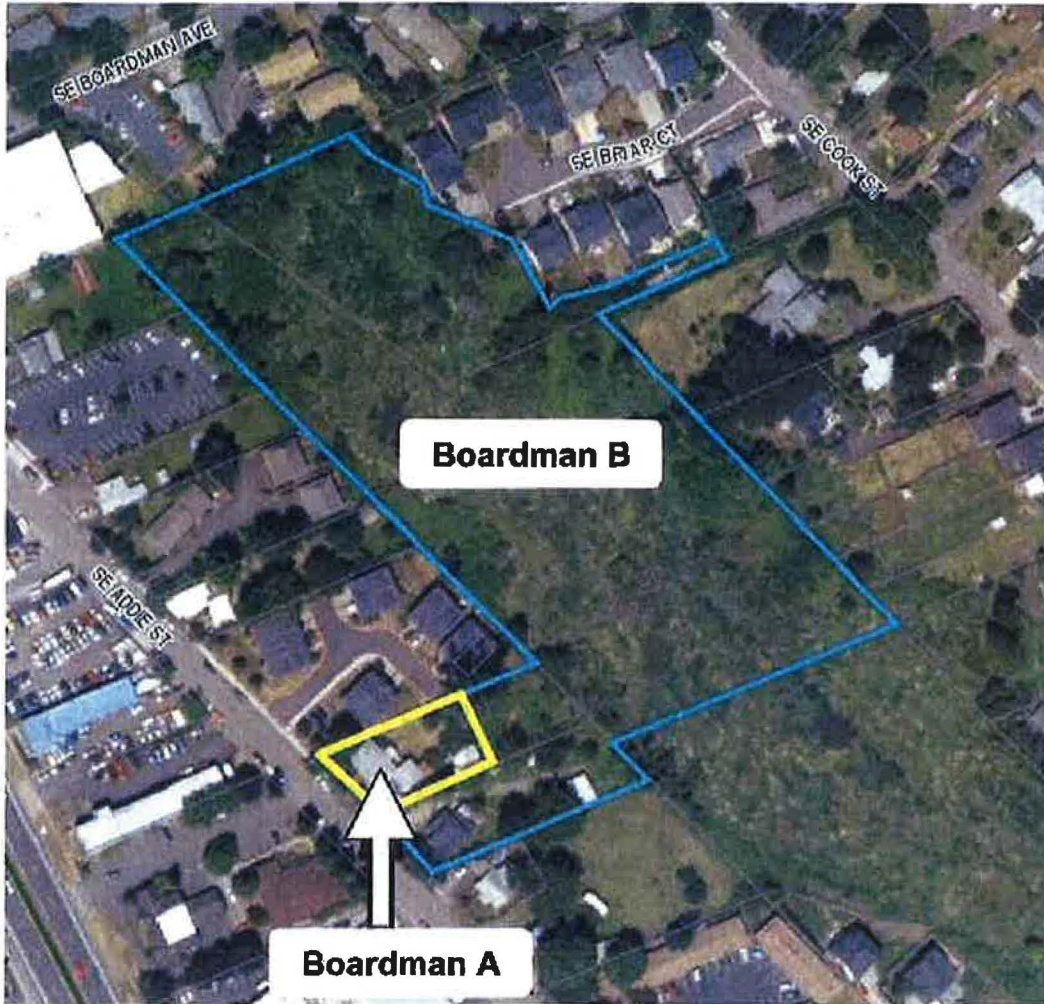
Chair

9/18/18

Date

Exhibit A
Boardman Wetland Project Boundary

Boardman A and Boardman B Property Descriptions



Property Details – Boardman A

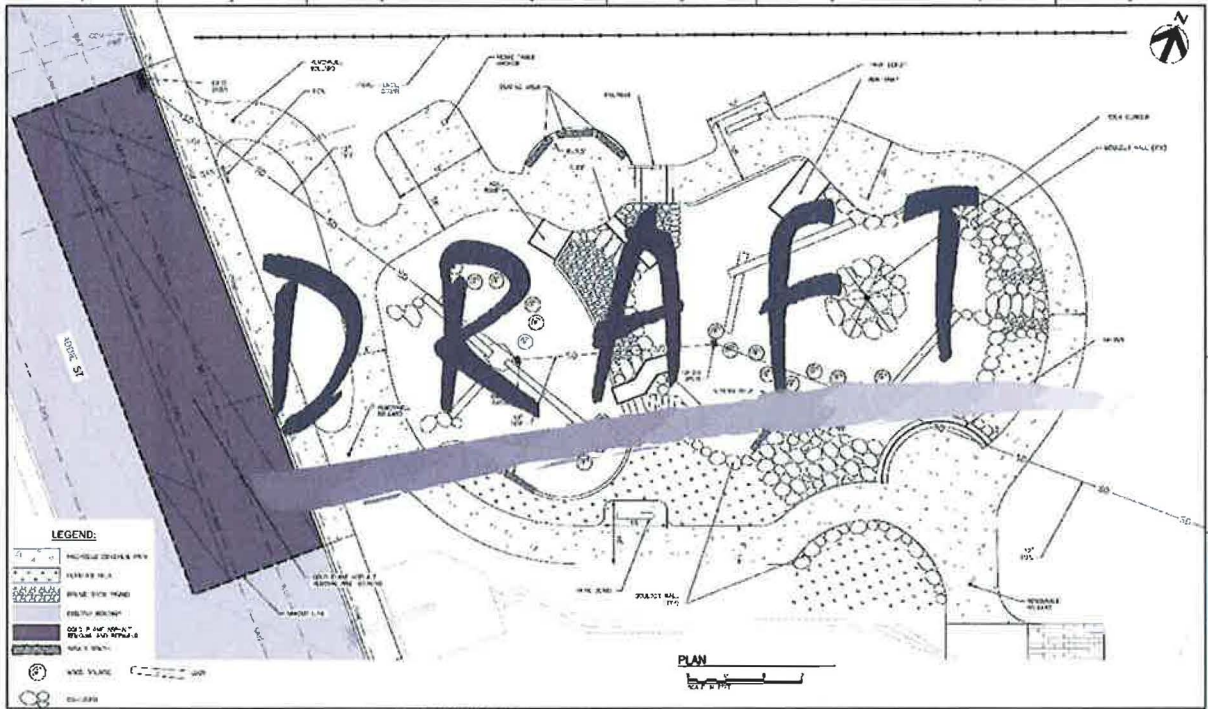
Location: 17900 SE Addie ST
Site Size: 0.25 acres
NCPRD: Inside NCPRD District-SDC Zone 2
Current Owner: Oak Lodge Water Services District
Taxlots ½ of taxlot 22E18CA04200,

Property Details – Boardman B

Location: 17908 & 17900 SE Addie ST
Site Size: 5.55 acres
NCPRD: Inside NCPRD District-SDC Zone 2
Current Owner: Oak Lodge Water Services District
Taxlots ½ of taxlot 22E18CA04200,
22E18CA04300, 22E18CA04101,
22E18CA02716

Exhibit B
Purchase and Sale Agreement – Boardman Wetland Natural Area

Exhibit C Boardman Wetland Project Designs



PROJECT NUMBER	01-10-10
DATE	01/10/10
PROJECT NAME	BOARDMAN WETLAND
PROJECT NUMBER	01-10-10



Boardman Wetland Complex
NATURE PLAY AREA LAYOUT
SCALE: 1" = 10'

Exhibit A
Boardman Project 90% Designs

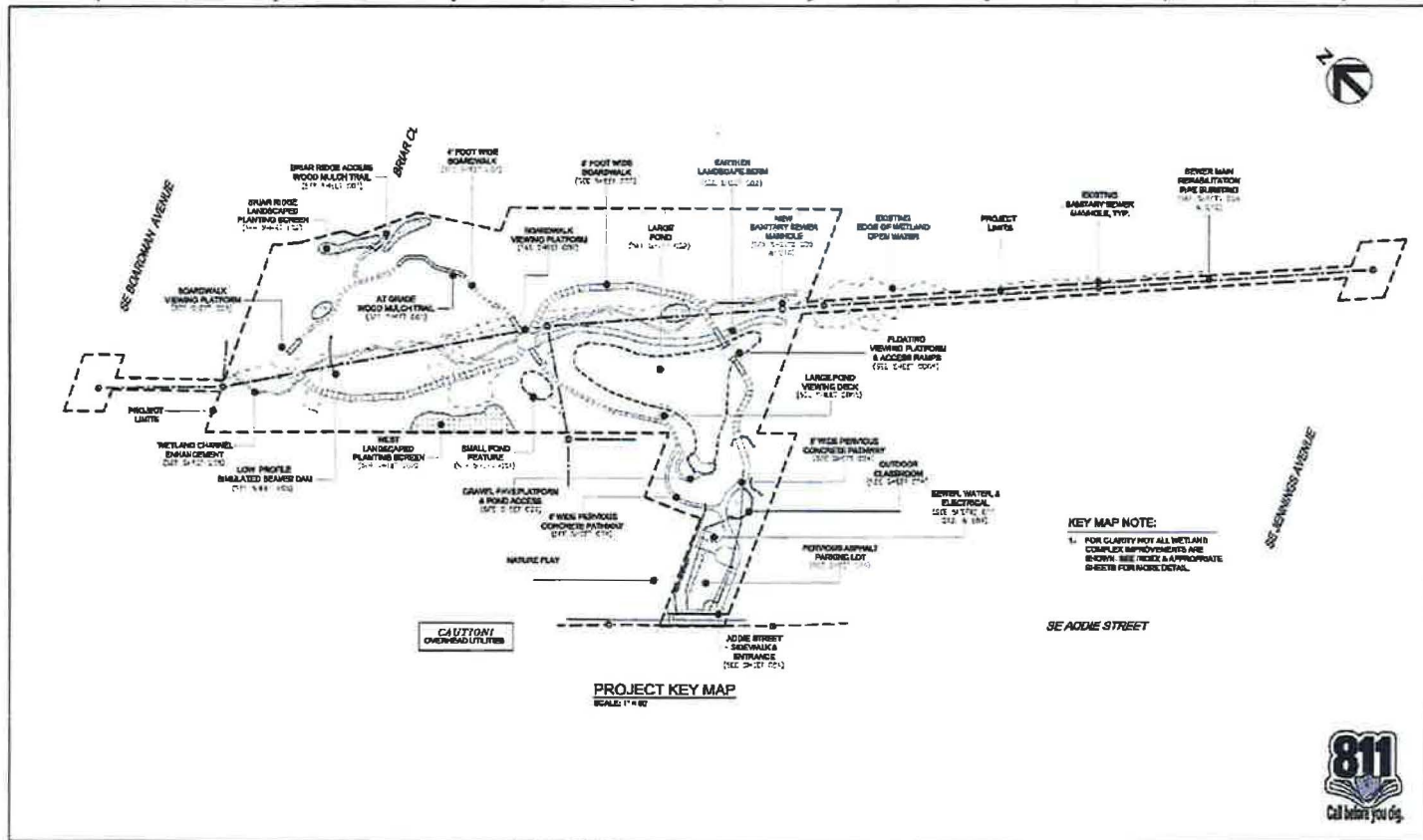


Exhibit C Con't
Boardman Wetland Project Designs



DATE	DESCRIPTION	PROJECT MANAGER	DESIGNED BY	CHECKED BY	PROJECT NUMBER	VERSION

90%
Not For Construction



Boardman Wetland Complex

PROJECT KEY MAP

OF PLANS | QUANTITIES | SPECIFICATIONS | INDEX

SHEET
G02