



Gregory L. Geist
Director

April 25, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Approval of Easements to Water Environment Services for Pipeline
and Access Purposes Adjacent to the Carli Creek Water Quality Facility
and Release of Existing Easements Affecting the Same

Purpose/Outcomes	Approval of an easement related to a permanent pipeline, stormwater and maintenance detention, and another easement for permanent access to a pump station and the Carli Creek Water Quality Facility, and release of existing easements affecting the same.
Dollar Amount and Fiscal Impact	None identified
Funding Source	N/A
Duration	Permanent
Previous Board Action	Original Intergovernmental Agreement with the Development Agency of Clackamas County and WES approved on July 27, 2017, and amended by the Board on July 12, 2018. Original easements approved by the Board on July 12, 2018.
Strategic Plan Alignment	1. Build public trust through good government.
Contact Person	Ron Wierenga, 503-742-4581
Contract No.	<i>None</i>

BACKGROUND:

On July 27, 2017, the Development Agency and Clackamas County Service District No. 1 (“CCSD #1”) executed an intergovernmental agreement (“IGA”) to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

The IGA was assigned from CCSD#1 to Water Environment Services (“WES”) in July 2018. The IGA requires the Agency to convey a permanent pipeline, stormwater detention, and maintenance easement to WES, along with a second permanent access easement. These

easements were originally granted in July, 2018. As the Development Agency approaches closing with the end user of the adjacent property, amendments to the existing easements have become necessary to accommodate certain requirements of the future development. Prior to the Development Agency conveying its interest in the portion of the Capps Road/Clackamas Industrial Area Opportunity Project to Bottling Group, LLC, WES staff recommends finalizing the amendments to the existing easements. Amending these easements will occur by way of releasing the existing easements, and replacing those easements with the updated easements, which are attached to this report.

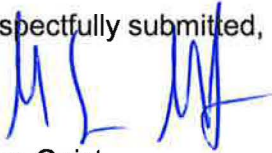
The updated access easement will relocate the existing access to better accommodate the proposed building footprint. Revised terms of both the pipeline and access easements will limit access to secured areas within the easement area to certain times.

County Counsel has reviewed and approved the easements, as well as the releases.

RECOMMENDATION:

WES staff recommends the Board approve the easements and releases as described above.

Respectfully submitted,



Greg Geist
Director, Water Environment Services

Attachments:

- Permanent Non-Exclusive Access Easement
- Permanent Non-Exclusive Pipeline, Stormwater Detention, and Maintenance Easement
- Release of Recorded Easement (Access)
- Release of Recorded Easement (Pipeline, Stormwater Detention, and Maintenance)

Grantor: Clackamas County		State of Oregon
Development Agency		
Address: 150 Beavercreek Road		
Oregon City, OR 97045		
Grantee: Water Environment		
Services		
Address: 150 Beavercreek Road		
Oregon City, OR 97045		
After Recording Return to:		
Water Environment Services		
150 Beavercreek Road		
Oregon City, OR 97045		
Until a change is requested,		
all taxes shall be sent to:		
No Change		

**PERMANENT NON-EXCLUSIVE PIPELINE,
STORMWATER DETENTION, MAINTENANCE**
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement to lay down, construct, reconstruct, replace, operate, inspect and perpetually maintain a storm water pipeline and underground water quality structures in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described in Exhibit “A” which is attached hereto and by this reference made a part hereof (the “Property”).

The permanent easement described herein is more particularly depicted in Exhibit “B” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document. This easement shall include the right of Grantee to excavate for, and to construct, place, operate, maintain, repair, replace, relocate, inspect, and remove an underground storm drain pipeline and underground water quality structures with all appurtenances incident thereto or necessary therewith, including manholes, for the purpose of conveying stormwater through said Property, together with the right of Grantee to place, excavate, replace, repair, install, maintain, operate, inspect, and relocate pipelines and necessary appurtenances, and make excavations therefor from time to time, in, under, and through the above-described Property within said Easement Area, and to cut and remove from said Easement Area any trees and other obstructions which may endanger the safety or interfere with the use of said pipelines or underground water quality structures, and any appurtenances attached to or connected therewith; and the right of ingress and egress to and over said above-described Easement Area for the purpose of repairing, renewing, excavating, replacing, inspecting, maintaining the number of pipelines and underground water

quality structures, and any appurtenances attached to or connected therewith, and for doing anything necessary, useful, or convenient for the enjoyment of the easement hereby granted. No buildings, sidewalks or paths shall be constructed over the pipeline easement and no earthfill or embankment shall be placed within the Easement Area without a specific written agreement between Grantee and Grantor, or its successors or assigns. Should such a specific agreement be executed, Grantee will set forth the conditions under which such fill or embankment may be placed, including a stipulation that all risks of damage to the pipeline shall be assumed by Grantor, or its successors or assigns. Grantor may pave over the Easement Area for purpose of providing parking or vehicle access areas.

Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Except in an emergency creating an immediate risk of environmental damage, personal injury or property damage, Grantee may not enter upon and utilize the Easement Area for the purposes described in this document unless at least forty eight (48) hours before work is commenced or access is needed, the Grantor is provided notice. Notice may be arranged by any delivery method reasonably calculated to provide actual notice to Grantor, including email directed to Grantor's registered agent. Except in an emergency or unless otherwise agreed to by the Grantor, Grantor shall provide access to the Easement Area during the weekday hours of 7:00am-6:00pm (PST), subject to the forty eight (48) hour notice requirement described in this paragraph.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the construction and installation of such do not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Subject to the limitations in the Oregon Constitution and the Oregon Tort Claims Act, Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify

the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest practices, as defined in ORS 30.930, and to inquire about the rights of neighboring property owners, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010.

In witness whereof, the above named Grantor has hereunto set Grantor's hand to this document on this _____ day of _____ 2019.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of _____ 2019.

by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

ACCEPTED BY GRANTEE:
WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

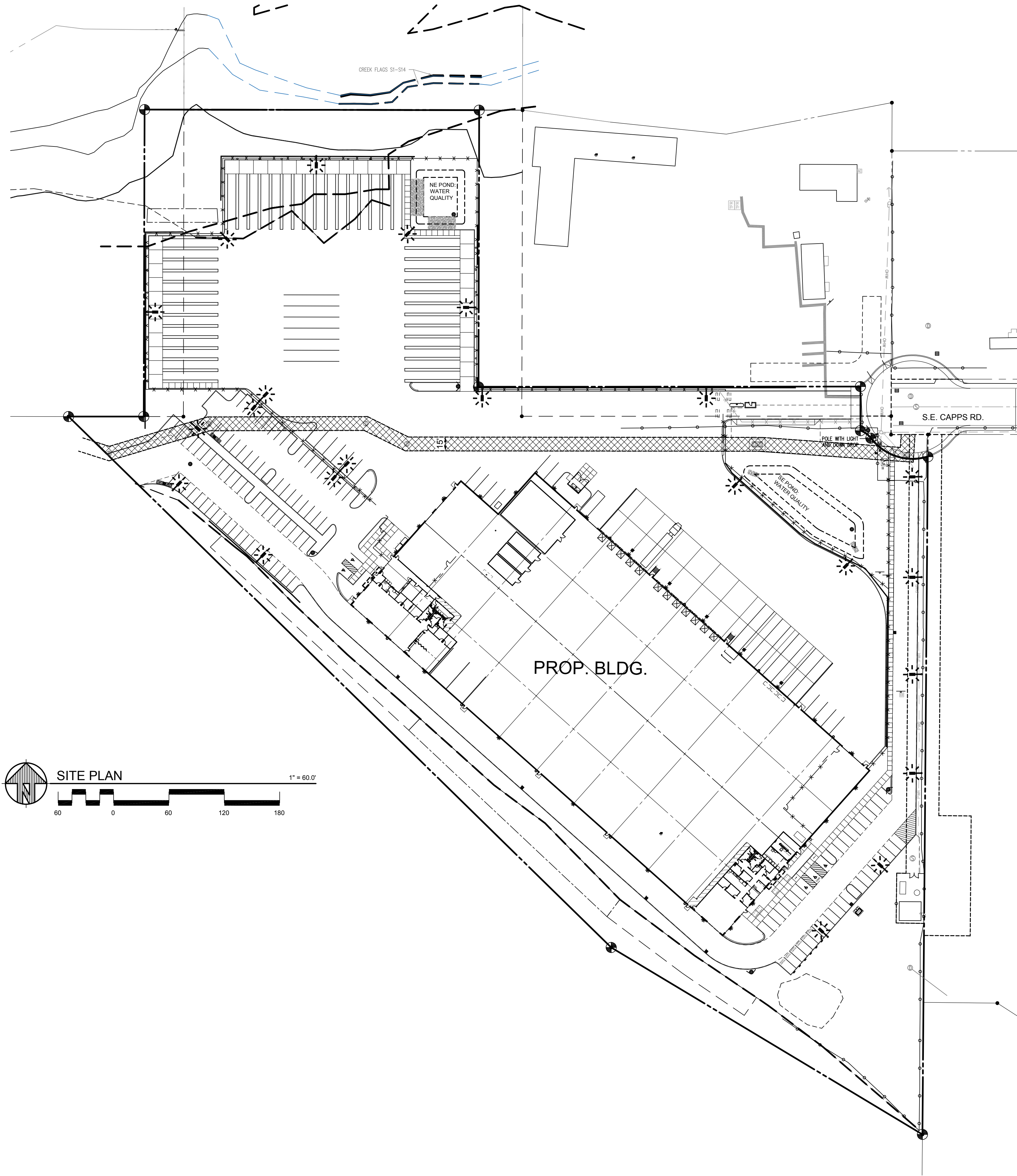
Chair

Date

Exhibit A

Grantor's real property more particularly described as follows: A tract of fee land located in the NE $\frac{1}{4}$ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395.

Exhibit B

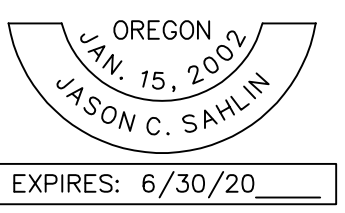
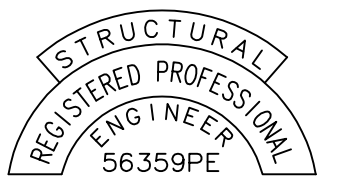


PROJECT NAME
NDA CLACKAMAS

11650 SE CAPPS ROAD
CLACKAMAS, OR.

REVISIONS

NO.	DATE	DESCRIPTION
1	11-13-18	REVS PER COUNTY REVIEW
2	01-30-19	NO CHANGES THIS SHEET
3	03-20-19	REVS PER COUNTY AND VLMK/OWNER REVIEW
4	03-29-19	NO CHANGES THIS SHEET



DATE	JUNE 2018
SCALE	AS NOTED
DRAWN	BGL
CHECKED	JS
PROJ. NO.	20180284

MASTER SITE PLAN

Grantor: Clackamas County Development Agency		State of Oregon
Address: 150 Beavercreek Road Oregon City, OR 97045		
Grantee: Water Environment Services		
Address: 150 Beavercreek Road Oregon City, OR 97045		
After Recording Return to: Water Environment Services 150 Beavercreek Road Oregon City, OR 97045		
Until a change is requested, all taxes shall be sent to: No Change		

PERMANENT NON-EXCLUSIVE ACCESS EASEMENT
(Corporate or Non Profit Grantor)

KNOW ALL PERSONS BY THESE PRESENTS, THAT Clackamas County Development Agency, the urban renewal agency of Clackamas County, a corporate body politic, (“Grantor”), for value received, hereby grants and conveys to Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, (“Grantee”), its heirs, successors and assigns, a permanent non-exclusive easement for ingress and egress, in, under, upon, and across Grantor’s real property located in Clackamas County, State of Oregon, and with Grantor’s real property more particularly described in Exhibit “A” which is attached hereto and by this reference made a part hereof (the “Property”).

The permanent easement for ingress and egress is more particularly depicted in Exhibit “B” which is attached hereto and by this reference made a part hereof (the “Easement Area”).

This is a grant from one entity of Clackamas County to another in an intergovernmental transfer. Other consideration than money was the true and actual consideration for this conveyance.

Grantee shall have the right to enter upon and utilize the Easement Area for the purposes described in this document, which includes, but is not necessarily limited to ingress and egress to the Carli Creek Water Quality Facility, which is located to the west of Grantor’s Property and owned by Grantee (see Clackamas County Document # 2019-013922), and ingress and egress to a pump station facility located within the easements described in Clackamas County Document # 2001-063320, Document # 2006-076888 and Document # 1982-020628. Grantee may remove trees, shrubs, brush, paving or other materials within the Easement Area whenever necessary to accomplish these purposes. Grantee shall be responsible to restore any property disturbed by its use of the Easement Area to its original condition upon completion of their work or use and shall be responsible for any damage caused by same.

Neither Grantor nor Grantor’s successors in title shall construct or maintain any building or other structures upon the above described Easement Area which will unreasonably interfere with Grantee’s exercise of this easement.

Grantee shall be solely responsible for determining the location of all utilities in the Easement Area that may be affected by work performed in the Easement Area by or on behalf of Grantee. Grantee shall provide all required notification to the applicable utility companies and shall take all steps necessary to prevent damage to or disruption of all utilities and utility service and other equipment and systems in the Easement Area.

Grantor shall provide Grantee access to the Easement Area at all times for purposes of accessing the pump station facility, described above. Grantor shall provide Grantee access to the Easement Area during the weekday hours of 7:00am-6:00pm (PST) for the purposes of accessing the Carli Creek Water Quality Facility, described above. In all other instances, except in an emergency creating an immediate risk of environmental damage, personal injury or property damage, Grantee may not enter upon and utilize the Easement Area for the purposes described in this document unless the Grantor is provided notice at least forty eight (48) hours before work is commenced or access is needed. Notice may be arranged by any delivery method reasonably calculated to provide actual notice to Grantor, including email directed to Grantor's registered agent.

Except as otherwise provided, the Easement Area shall be non-exclusive. Grantor shall have the right to grant easements to others to cross or use the Easement Area now or in the future, provided the use, construction and installation of such does not unreasonably interfere with the repair, maintenance or operation of Grantee's facilities and related appurtenances.

Grantor shall pay all real property taxes assessed to Grantor's parcel without apportionment thereof relating to this easement.

As part of the consideration for this Agreement, Grantee agrees to construct a gate, or other barrier, on its property to restrict vehicular access between the Property and the Carli Creek Water Quality Facility by way of the Easement Area. Grantee agrees to construct this gate or barrier no later than December 31, 2019.

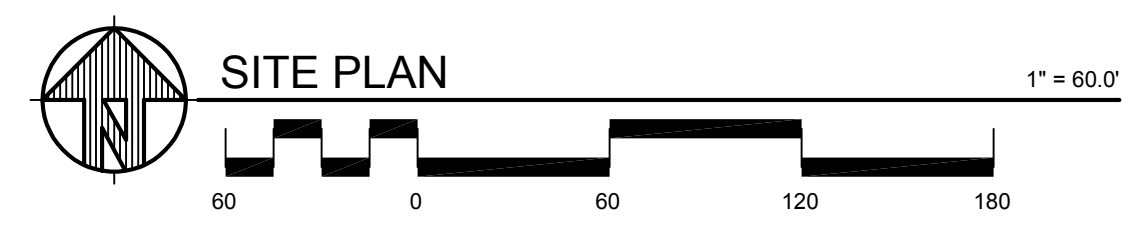
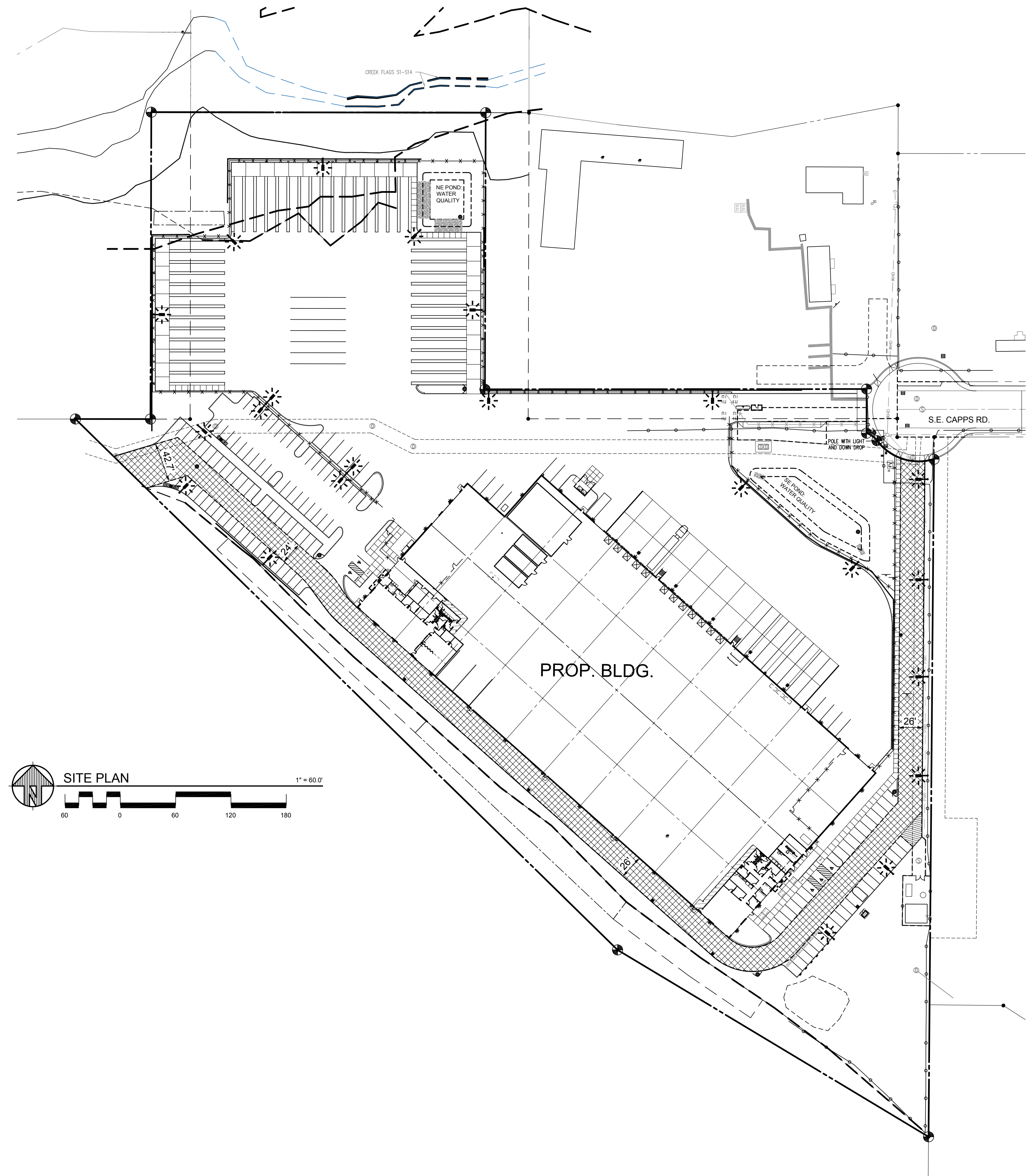
Subject to the limitations in the Oregon Constitution and the Oregon Tort Claims Act, Grantee covenants to and does hereby agree to indemnify, hold harmless and defend the Grantor and his successors and assigns, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of any person or persons, or any accident, personal injury, loss or damage whatsoever caused to any person or entity or to the property of any person or entity as shall occur on or about the Easement Area as the result of the Grantee's exercise of the rights granted in this Agreement, or Grantee's failure to perform the obligations set forth in this Agreement. There shall be excluded from the foregoing indemnification the damages, costs and expenses to the extent that such damages, costs and expenses are caused by the negligence of Grantor, his agents, employees, representatives, or their successors and assigns.

Statutory Land Use Disclaimer: Before signing or accepting this instrument, the person transferring fee title should inquire about the person's rights, if any, under ORS 195.300, 195.301 and 195.305 to 195.336 and Sections 5 to 11, Chapter 424, Oregon Laws 2007, Sections 2 to 9 and 17, Chapter 855, Oregon Laws 2009, and Sections 2 to 7, Chapter 8, Oregon Laws 2010. This instrument does not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify that the unit of land being transferred is a lawfully established lot or parcel, as defined in ORS 92.010 or 215.010, to verify the approved uses of the lot or parcel, to determine any limits on lawsuits against farming or forest

Exhibit A

Grantor's real property more particularly described as follows: A tract of fee land located in the NE $\frac{1}{4}$ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395.

Exhibit B

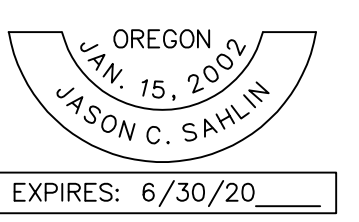
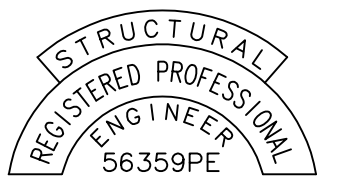


PROJECT NAME
NDA CLACKAMAS

11650 SE CAPPAS ROAD
CLACKAMAS, OR.

REVISIONS

NO.	DATE	DESCRIPTION
1	11-13-18	REVS PER COUNTY REVIEW
2	01-30-19	NO CHANGES THIS SHEET
3	03-20-19	REVS PER COUNTY AND VLMK/OWNER REVIEW
4	03-29-19	NO CHANGES THIS SHEET



DATE	JUNE 2018
SCALE	AS NOTED
DRAWN	BGL
CHECKED	JS
PROJ. NO.	20180294

MASTER SITE PLAN

MAIL TAX STATEMENTS TO:

No Change

AFTER RECORDING RETURN TO:

Water Environment Services
150 Beaver creek Rd.
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Clackamas County Development Agency
150 Beaver creek Rd.
Oregon City, OR 97045

GRANTEE'S ADDRESS:

Water Environment Services
150 Beaver creek Rd.
Oregon City, OR 97045

RELEASE OF RECORDED EASEMENT

The purpose of this conveyance is to release and relinquish all of the right, title, and interest of Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, ("Grantee"), in the premises described in Exhibit "A" attached hereto and incorporated herein, arising by reason of that certain Permanent Non-Exclusive Access Easement granted by the Clackamas County Development Agency ("Grantor") recorded on October 30, 2018 in the Real Property Records of Clackamas County, Oregon as document number 2018-066562.

In witness whereof, the parties hereto execute this document on this ____ day of _____ 2019.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of
_____ 2019,

by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of
_____ 2019,

by Jim Bernard as Chair of Water Environment Services.

Notary Public for State of Oregon
My Commission Expires: _____

Exhibit A

Grantor's real property more particularly described as follows: A tract of fee land located in the NE $\frac{1}{4}$ of Section 15, T2S, R2E, WM, as more particularly described by that certain Warranty Deed recorded on October 8, 2009 as Document No. 2009-071163 in the Deed Records of Clackamas County, Oregon, and that Property Line Adjustment Deed (corrective) recorded on February 7, 2018 as Document No. 2018-008395.

MAIL TAX STATEMENTS TO:

No Change

AFTER RECORDING RETURN TO:

Water Environment Services
150 Beaver Creek Rd.
Oregon City, OR 97045

GRANTOR'S ADDRESS:

Clackamas County Development Agency
150 Beaver Creek Rd.
Oregon City, OR 97045

GRANTEE'S ADDRESS:

Water Environment Services
150 Beaver Creek Rd.
Oregon City, OR 97045

RELEASE OF RECORDED EASEMENT

The purpose of this conveyance is to release and relinquish all of the right, title, and interest of Water Environment Services, a municipal partnership entity formed pursuant to ORS Chapter 190, ("Grantee"), in the premises described in Exhibit "A" attached hereto and incorporated herein, arising by reason of that certain Permanent Non-Exclusive Pipeline, Stormwater Detention, Maintenance Easement granted by the Clackamas County Development Agency ("Grantor") recorded on October 30, 2018 in the Real Property Records of Clackamas County, Oregon as document number 2018-066563.

In witness whereof, the parties hereto execute this document on this ____ day of _____ 2019.

CLACKAMAS COUNTY DEVELOPMENT AGENCY,
the URBAN RENEWAL AGENCY OF CLACKAMAS COUNTY,
a corporate body politic under ORS Chapter 457

By: _____
Jim Bernard, Chair

WATER ENVIRONMENT SERVICES,
a municipal partnership entity under ORS Chapter 190

By: _____
Jim Bernard, Chair

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of
_____ 2019,

by Jim Bernard as Chair of the Clackamas County Development Agency.

Notary Public for State of Oregon
My Commission Expires: _____

STATE OF OREGON)
) ss.
County of _____)

This instrument was signed and attested before me this _____ day of
_____ 2019,

by Jim Bernard as Chair of Water Environment Services.

Notary Public for State of Oregon
My Commission Expires: _____

Exhibit A

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Gregory L. Geist
Director

April 25, 2019

Water Environment Services Board
Board of County Commissioners
Clackamas County

Members of the Board:

Delegation of Authority to Execute a Property Line Adjustment Deed with
the Development Agency to Adjust Approximately .33 Acres of Land on
Property Located On Capps Road West of SE 120th Avenue

Purpose/Outcomes	Delegate authority to the director of Water Environment Services to finalize a transfer of excess property adjacent to the Carli Creek Water Quality Facility, to facilitate the development of industrial land.
Dollar Amount and Fiscal Impact	None identified
Funding Source	N/A
Duration	Permanent
Previous Board Action	Original Intergovernmental Agreement with WES approved on July 27, 2017, and amended by the Board on July 12, 2018.
Strategic Plan Alignment	1. Build public trust through good government.
Contact Person	Ron Wierenga, 503-742-4581
Contract No.	<i>None</i>

BACKGROUND:

In January 2012, Clackamas County Service District No. 1 (“CCSD #1”) purchased a 15-acre property owned by the Carli family to construct a regional stormwater facility in support of water quality and stream health. The project also fulfills state and federal regulatory requirements to improve stormwater treatment in older areas that drain to urban creeks, like Carli Creek, which discharges into the Clackamas River. The main elements of the Carli Creek Enhancement and Water Quality Project (“Carli Creek Project”) include:

- 1) Re-routing stormwater conveyance systems along SE 120th St and SE Capps Road;
- 2) Regional water quality treatment facility;
- 3) Wetlands and upland habitat enhancement; and
- 4) Carli Creek habitat restoration for fish.

The Carli Creek Project has since been completed and is now operational.

On July 27, 2017, the Development Agency and CCSD #1 executed an intergovernmental agreement (“IGA”) to facilitate the Carli Creek Project by accommodating the construction of a new stormwater pipeline to divert runoff currently discharged to Carli Creek to the new water quality treatment facility. The new stormwater pipeline is located on adjacent property to the east of the Carli Creek Project site. The adjacent property is currently owned by the Clackamas County Development Agency. The Development Agency is under contract to sell the adjacent property as a part of the Capps Road/Clackamas Industrial Area Opportunity Project. In order to fill wetlands on this property to facilitate development, the Agency is required to perform wetland mitigation. This mitigation has been incorporated as part of the Carli Creek Project.

The IGA was assigned to Water Environment Services (“WES”) in July 2018. In Section 3.D of the IGA, WES has granted the Agency the option to purchase certain excess property not necessary for the Carli Creek Project (the “Option Parcel”). The Option Parcel is shown on the map, attached to the IGA as Exhibit “A”. The IGA is attached to this report. This provision recognized that development was planned to occur on property owned by the Agency, adjacent to the Carli Creek Project, and that the Option Parcel could enhance development opportunities in the event the Option Parcel was not needed for the Carli Creek Project. As part of the consideration for the Agency granting CCSD #1 the right to construct and operate a pipeline over its property, CCSD #1 provided a credit for the future purchase of the Option Parcel by the Agency.

The Development Agency is rapidly approaching closing with the end user of the adjacent property, and acquisition of a portion of the Option Parcel has become necessary to accommodate certain requirements of the future development. The portion to be transferred is highlighted in blue on the attached map as Exhibit “B”. Development Agency staff have requested that its Board exercise its option under Section 3.D of the IGA and acquire the necessary portion of the Option Parcel. To help facilitate the timing of the Development Agency’s closing with Bottling Group, LLC, WES staff requests that the Board delegate its authority to execute a property line adjustment deed with the Development Agency to complete the transaction, consistent with the terms of Section 3.D of the IGA.

RECOMMENDATION:

WES staff recommends the Board delegate authority to the Director of WES to execute a property line adjustment deed with the Development Agency to complete the transaction, consistent with the terms of Section 3.D of the IGA.

Respectfully submitted,



Chris Storey
Assistant Director, Water Environment Services

Attachments:

July 27, 2017, IGA

July 12, 2018, Amendment to the IGA

Map

**INTERGOVERNMENTAL AGREEMENT
BETWEEN CLACKAMAS COUNTY SERVICE DISTRICT NO. 1 and
CLACKAMAS COUNTY DEVELOPMENT AGENCY For
CARLI CREEK RESTORATION AND MITIGATION**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into and between Clackamas County Development Agency, the Urban Renewal Agency of Clackamas County (hereafter called "Agency"), and Clackamas County Service District No. 1 ("District"), a county service district formed pursuant to ORS Chapter 451, collectively referred to as the "Parties" and each a "Party."

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;

WHEREAS, the District is planning to construct the Carli Creek Water Quality and Enhancement Project ("Project") to meet state and federal regulations; and

WHEREAS, the District desires to construct a portion of the Project on property located at 11436 SE Capps Rd on Tax lot 22E15A 01800 ("Capps Property") owned by Agency; and

WHEREAS, the Agency is required to perform wetland mitigation ("Mitigation") as a part of the Capps Road/Clackamas Industrial Area Opportunity Project ("CIAO Project") pursuant to Permit No. NWP-2012-181-1, attached hereto as Exhibit "C," issued by the U.S. Army Corps of Engineers ("Permit"); and

WHEREAS, the Agency is interested in incorporating wetland mitigation areas as part of the Carli Creek Restoration Project in order to meet the requirements of the Mitigation; and

WHEREAS, the District is willing to include additional wetland mitigation areas as a component of the Project in return for easements and land transfer from the Agency;

WHEREAS, the value of the property interests transferred from the Agency to the District is approximately \$330,000.00, and the value of the Mitigation provided by the District to the Agency is approximately \$330,000.00, as more specifically set forth in Exhibit "D"; and

WHEREAS, the coordination of these projects will be mutually beneficial, resulting in cost savings, while promoting efficiency and effectiveness in local government administration.

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

1. **Term.** This Agreement shall be effective upon execution, and shall expire ten (10) years from the effective date or at the time the Mitigation requirements have been fulfilled under the Permit, whichever is sooner.
2. **Obligations of Clackamas County Development Agency**
 - A. Agency agrees to provide a temporary construction easement to the District for the duration of construction of the Project on the Capps Property, 35 feet in width and in the location shown in Exhibit A.
 - B. Agency agrees to provide a permanent pipeline, access and maintenance easement to the District on the portion of the Capps Property that contains the Project, fifteen (15) feet in width, as shown in Exhibit A, prior to completion of the Project. This easement shall include the right to operate and maintain a new stormwater pipeline.

- C. Agency agrees to provide a permanent access easement to the District related to the new stormwater pipeline located in the Capps Property, fifteen (15) feet in width and as shown in Exhibit A. The Parties acknowledge that, depending on the future development of the Capps Property, it may be necessary to relocate the access easement described herein and agree to negotiate in good faith to amend the easement to provide the District sufficient access to the new stormwater pipeline, and to mitigate the impacts such easement could have on future development.
- D. Agency agrees to provide a Right of Entry to the District on Tax Lot 22E15A 01700 for use as a construction staging area throughout the duration of the Project.
- E. Agency agrees to accept up to 20,000 cubic yards of clean fill material from the Project site. The location for placement of the fill material shall be as shown in Exhibit B. Costs associated with the relocation of the fill materials will be the responsibility of the District and shall include transportation, grading and compaction. Any fill material, and placement of such fill material, shall comply with the following standards:
 - i. All fills must be placed consistent with the excavation and grading provisions of the Clackamas County Code (Title 9). Site preparation must include the removal of vegetation, non-complying fill, topsoil, or other unsuitable materials prior to placement of the fill. Fill slopes shall not exceed a grade of two horizontal to one vertical.
 - ii. All cuts shall be made consistent with the excavation and grading provisions of the Clackamas County Code. No cut shall exceed a grade of two horizontal to one vertical unless approved beforehand by the project geotechnical engineer and Clackamas County.
 - iii. Appropriate benching of fills is required for fills over five feet in height on slopes in excess of five horizontal to one vertical. Bench must be done in accordance with the approved plans. Clackamas County shall inspect benches prior to fill placement.
 - iv. Cut and fill slopes shall be protected from erosion. Such control may consist of appropriate revegetation or other acceptable means and methods. Erosion control measures shall be in place prior to earthwork or site stripping as required by the local surface water management authority.
 - v. Placement and compaction of fill material shall be placed consistent with the relevant provisions of the Oregon Structural Specialty Code sections 330.42 and 330.43.
- F. Agency, or its successor, assign, or designee, shall remain the permittee under the Permit related to the wetland mitigation requirements imposed on the Agency. The District shall be responsible for those requirements imposed under the Permit that are specifically related to the Mitigation component of the Permit. Under no circumstances shall the District be responsible or held liable for any Agency non-compliance with any condition or requirement unrelated to the Mitigation component of the aforementioned permit, including but not limited to, those conditions and requirements affecting impacts to wetlands or construction on Tax Lot 22E15A 01900.

3. **Obligation of the District.**

- A. District agrees to oversee the administration of Project and manage the construction of the Project.

- B. District agrees to meet the requirements of the Mitigation, including the design and construction of 1.3 acres of mitigation wetlands as part of the Project to be used as compensatory mitigation on behalf of the Agency for impacts to wetlands related to construction of the CIAO Project, as shown in Exhibit C.
- C. District is solely responsible for ensuring compliance with the Mitigation requirements specifically identified in this section that have been imposed on the Agency as a result of the CIAO Project. District agrees to complete the following compensatory wetland mitigation monitoring and reporting requirements for the Agency, consistent with **Special Conditions Nos. 3, 5, 6, 7 and 8 of the Permit**. Where materials identified in the preceding special conditions of the permit require Agency to submit materials directly to the U.S. Army Corps of Engineers, District shall timely submit those materials on behalf of the Agency and provide a copy to the Agency.
- D. The District acknowledges that there may be opportunities to develop approximately one acre on the upland portion of property on which the Project will be located. The District shall grant to the Agency an option to purchase the one acre upland portion of property, approximately identified by red outline in Exhibit A, for fair market value. As set forth in Exhibit D, the Parties agree that the sum of \$100,000 shall be applied to any future acquisition by the Agency of the upland portion of the property referred to herein in the event the Agency chooses to exercise its option to purchase. The District agrees to work with the Agency to facilitate development opportunities that do not jeopardize the District's ability to complete the Project.
- E. Upon termination of the right of entry, the District agrees to return the construction staging area on Tax Lot 22E15A 01700 to the Agency in a condition that would support development of Tax Lot 22E15A 01700 in a manner consistent with the rest of the Capps Property. This may require the District to improve Tax Lot 22E15A 01700 to ensure it is vacant, graded and compacted in a manner that would permit building construction as permitted in the applicable zone.

4. **Work Plan and Scheduling of Work.**

- A. District will manage the Project and intends to complete construction of the Project by December 31, 2018. Agency acknowledges that said schedule is dependent on many conditions and may be subject to change. District will provide prompt notice to Agency of any anticipated delays in the schedule.
- B. With the exception of the monitoring requirements, District will ensure that the Mitigation is substantially complete no later than November 30, 2017 and that "as-built" reports are available to be submitted to the U.S. Army Corps of Engineers by December 2017, consistent with Special Condition No. 5 contained in the Permit.
- C. 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.
- D. In the event either Party changes plans or specifications, approves change orders or extends unit prices that affect Project costs following the execution of the construction contract, the Party requesting the change may be held financially responsible for any additional direct or indirect costs associated with the change. Notwithstanding the foregoing, District shall be liable for the additional Project costs if changes in plans or specifications are made due to an act of God or other circumstances beyond the reasonable control of District.

5. **Early Termination of Agreement**

- i. The District and Agency, by mutual written agreement, may terminate this Agreement at any time.
 - ii. Either the District or Agency may terminate this Agreement in the event of a breach of the Agreement by the other. 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 entirely cured the breach 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. If the default is of such a nature that it cannot be completely remedied within such fifteen (15) day period, this provision shall be complied with if the breaching Party begins correction of the default within the fifteen (15) day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable. The Party giving notice shall not be required to give more than one (1) notice for a similar default in any twelve (12) month period.
6. **Indemnification.** Subject to the limits of the Oregon Tort Claims Act and Oregon Constitution, each of the Parties agrees to hold harmless and indemnify the others, and their elected and appointed officials, agents, and employees, from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising on account of personal injuries, death or damage to property caused by or resulting from their own acts or omissions or those of their officials, agents and employees.
 7. **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.
 8. **Applicable Law.** The Parties hereto agree to comply in all ways with applicable local, state and federal ordinances, statutes, laws and regulations.
 9. **Non-Exclusive Rights and Remedies.** Except as otherwise expressly provided herein, the rights and remedies expressly afforded under the provisions of this Agreement shall not be deemed exclusive, and shall be in addition to and cumulative with any and all rights and remedies otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies for the same default or breach, or for any other default or breach, by the other Party.
 10. **Record and Fiscal Control System.** All payroll and financial records pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible. Such records and documents should be retained for a period of three (3) years after receipt of final payment under this Agreement; provided that any records and documents that are the subject of audit findings shall be retained for a longer time until such audit findings are resolved.
 11. **Access to Records.** The Parties acknowledge and agree that each Party, the federal government, and their duly authorized representatives shall have access to each Party's books, documents, papers, and records which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of three years after final payment. Copies of applicable records shall be made available upon request. The cost of such inspection shall be borne by the inspecting Party.

12. **Debt Limitation.** This Agreement is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
13. **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.
14. **Integration, Amendment and Waiver.** Except as otherwise set forth herein, this Agreement constitutes the entire agreement between the Parties on the matter of the Project. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision.
15. **Interpretation.** The titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.
16. **Independent Contractor.** Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.
17. **No Third-Party Beneficiary.** Neither Party intends that this Agreement benefit, or create any right or cause of action in, or on behalf of, any person or entity other than the County or the District.
18. **No Assignment.** No Party shall have the right to assign its interest in this Agreement (or any portion thereof) without the prior written consent of the other Party, which consent may be withheld for any reason. The benefits conferred by this Agreement, and the obligations assumed hereunder, shall inure to the benefit of and bind the successors of the Parties.
19. **Counterparts.** This Agreement may be executed in any number of counterparts (electronic, facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
20. **Authority.** Each Party represents that it has the authority to enter into this Agreement on its behalf and the individual signatory for a Party represents that it has been authorized by that Party to execute and deliver this Agreement.

21. **Necessary Acts.** Each Party shall execute and deliver to the others all such further instruments and documents as may be reasonably necessary to carry out this Agreement.

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

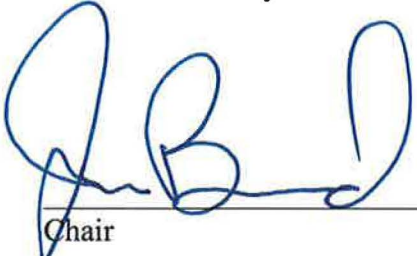
Clackamas County Development Agency



Chair
7-27-2017

Date IV . 1

Clackamas County Service District No. 1



Chair
7-27-2017

Date V.4

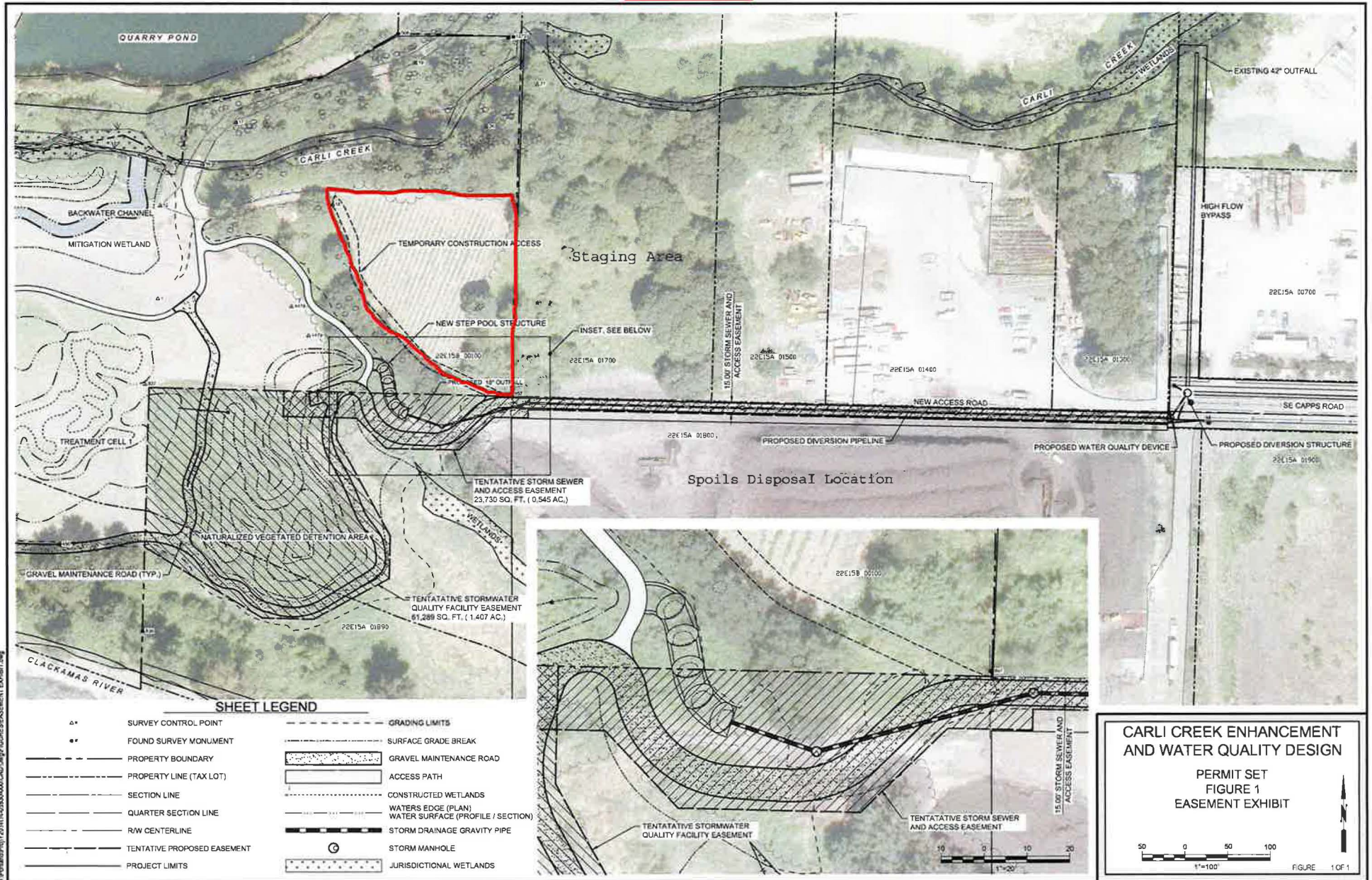


Recording Secretary

Exhibit List:

- Exhibit A: Easement Map
- Exhibit B: Fill Material Location Map
- Exhibit C: U.S. Army Corps of Engineers Permit No. NWP-2012-181-1
- Exhibit D: Value of Assets and Services

Exhibit A



SHEET LEGEND

△*	SURVEY CONTROL POINT	---	GRADING LIMITS
••	FOUND SURVEY MONUMENT	- - - -	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY	▨	GRAVEL MAINTENANCE ROAD
- - - -	PROPERTY LINE (TAX LOT)	▭	ACCESS PATH
---	SECTION LINE	▨	CONSTRUCTED WETLANDS
- - - -	QUARTER SECTION LINE	---	WATERS EDGE (PLAN)
---	R/W CENTERLINE	---	WATER SURFACE (PROFILE / SECTION)
- - - -	TENTATIVE PROPOSED EASEMENT	---	STORM DRAINAGE GRAVITY PIPE
---	PROJECT LIMITS	⊙	STORM MANHOLE
		▨	JURISDICTIONAL WETLANDS

CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

FIGURE 1 OF 1

Plotted: September 23, 2015
 O:\Portland\Proj\2015\14-000000\CAD\dwg\FIGURE EASEMENT EXHIBIT.dwg

EXHIBIT B



DEPARTMENT OF THE ARMY PERMIT

Permittee: Clackamas County Development Agency; Attention Mr. Dan Johnson

Permit No: NWP-2012-181-1

Issuing Office: U.S. Army Corps of Engineers

NOTE: The term "you" and its derivatives as used in this permit means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: The project will permanently place 7,851 cubic yards of fill in 1.02 acres of Wetland A. The site will be levelled for complete build-out of two industrial pads, each with a warehouse, loading area, storage, and parking. The northern pad includes a 294,000 square-foot industrial building. The southern pad includes a 246,000 square-foot building. Stormwater will be collected and treated through an existing stormwater facility constructed under previous authorization in 2015.

Purpose: The overall purpose of the project is to provide industrial facilities that would meet statewide industrial development goals and to provide economic stimulus to Clackamas County. This project would address the need for large industrial sites greater than 20 acres and less than 50 acres in size. This project is Phase 2 of a multi-phase development project located in the former rock quarry.

Project Location: The project is located on a wetland near the Clackamas River, Mile 4.5. The site is in Section 15 of Township 2 South, and Range 2 East, in the City of Happy Valley, Clackamas County, Oregon (Lat. 45.398128; Lon. -122.540758).

Drawings: There are 13 drawings labelled NWP-2012-181-1 (Enclosure 1).

General Conditions:

1. The time limit for completing the work authorized ends on October 31, 2021. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. Permittee must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions (Enclosure 2).
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. Permittee shall notify the Regulatory Branch with the start date when the activities authorized in waters of the U.S. are scheduled to begin. Notification shall be sent by email to cenwp.notify@usace.army.mil or mailed to the following address:

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

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

2. Permittee shall submit a signed certification regarding the completed work and any required mitigation. A "Compliance Certification" is provided (Enclosure 3).
3. Permittee shall fully implement the "Final Compensatory Wetland Mitigation Plan for Impacts to Wetlands for the Capps Road Industrial Site in Clackamas, Oregon" (Plan) dated January 28, 2016 (Enclosure 4). The mitigation site shall be constructed prior to or concurrently with the work authorized by this permit. The initial planting component of the Plan shall be completed by Fall 2017.
4. The fully executed Conservation Easement for the mitigation site shall be recorded with the Registrar of Deed or other appropriate official charged with maintaining records on real property. A copy of the fully executed Conservation Easement and proof of recording shall be submitted to the U.S. Army Corps of Engineers, Portland District, Regulatory Branch within 60 days from the date of permit issuance.

5. Permittee shall submit an "as-built" report by December 2017. The contents of the report shall include a narrative summary of the mitigation actions completed as well as pre- and post-construction photos from fixed locations. Photos shall be sufficient in number and spacing to represent the site in its entirety. Photos shall be labelled with the date and location taken. A map showing the location and orientation of the photos shall also be provided.

6. The permittee shall monitor the mitigation site for a five-year period following completion of the initial construction and plantings. Monitoring reports shall be provided by December 31 of each year of monitoring. The expected first year monitoring report is due 2018. The contents of the monitoring reports shall be consistent with Regulatory Guidance Letter 08-03 (Enclosure 5). Photos of the site from locations established in the as-built report shall also be provided.

7. The permittee shall achieve 80% percent total cover with native vegetation by Year 3 without maintenance for one year. Dead or dying plants may be replaced within the first two years of monitoring. The permittee shall achieve a minimum of 1280 stems per acre by the end of the five-year monitoring period. Target species may include both planted and recruited native individuals. The permittee shall ensure less than 15% total cover by invasive species and less than 5% of total area bare ground.

8. The permittee shall submit a wetland delineation of the mitigation site to demonstrate a minimum of 1.27 acres have been created. The delineation report shall follow the most recent version of the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains Valleys and Coast Region. The delineation shall be submitted with the final fifth-year monitoring report.

9. Permittee's responsibility to complete the required compensatory mitigation as set forth in Special Conditions "3" through "9" will not be considered fulfilled until Permittee has demonstrated mitigation success and have received written verification from the U.S. Army Corps of Engineers Portland District, Regulatory Branch.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this Authorization:

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33

CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions: General Condition No. 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below as permittee indicates that you accept and agree to comply with the terms and conditions of this permit.

 _____ 10/26/2016 _____
(PERMITTEE SIGNATURE) (DATE)

Don Johnson _____ Development Agency Manager _____
(PRINTED NAME) (TITLE)

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

**FOR THE COMMANDER, JOSE L. AGUILAR, COLONEL, CORPS OF ENGINEERS,
DISTRICT COMMANDER:**

FOR Jaimee W. Davis _____ 16 NOV 2016 _____
(DISTRICT COMMANDER) (DATE)

Shawn H. Zinszer
Chief, Regulatory Branch

When the structures or work authorized by this individual permit are still in existence at the time the property is transferred and/or a new party obtains this permit, the terms and conditions of this permit will continue to be binding on the new permittee. The new permittee should sign and date below to accept the liabilities associated with complying with the terms and conditions of this permit, and to validate its transfer.

PERMIT TRANSFEREE:

Transferee Signature

DATE

Name (Please print)

Street Address

City, State, and Zip Code

NEW PROPERTY OWNER:

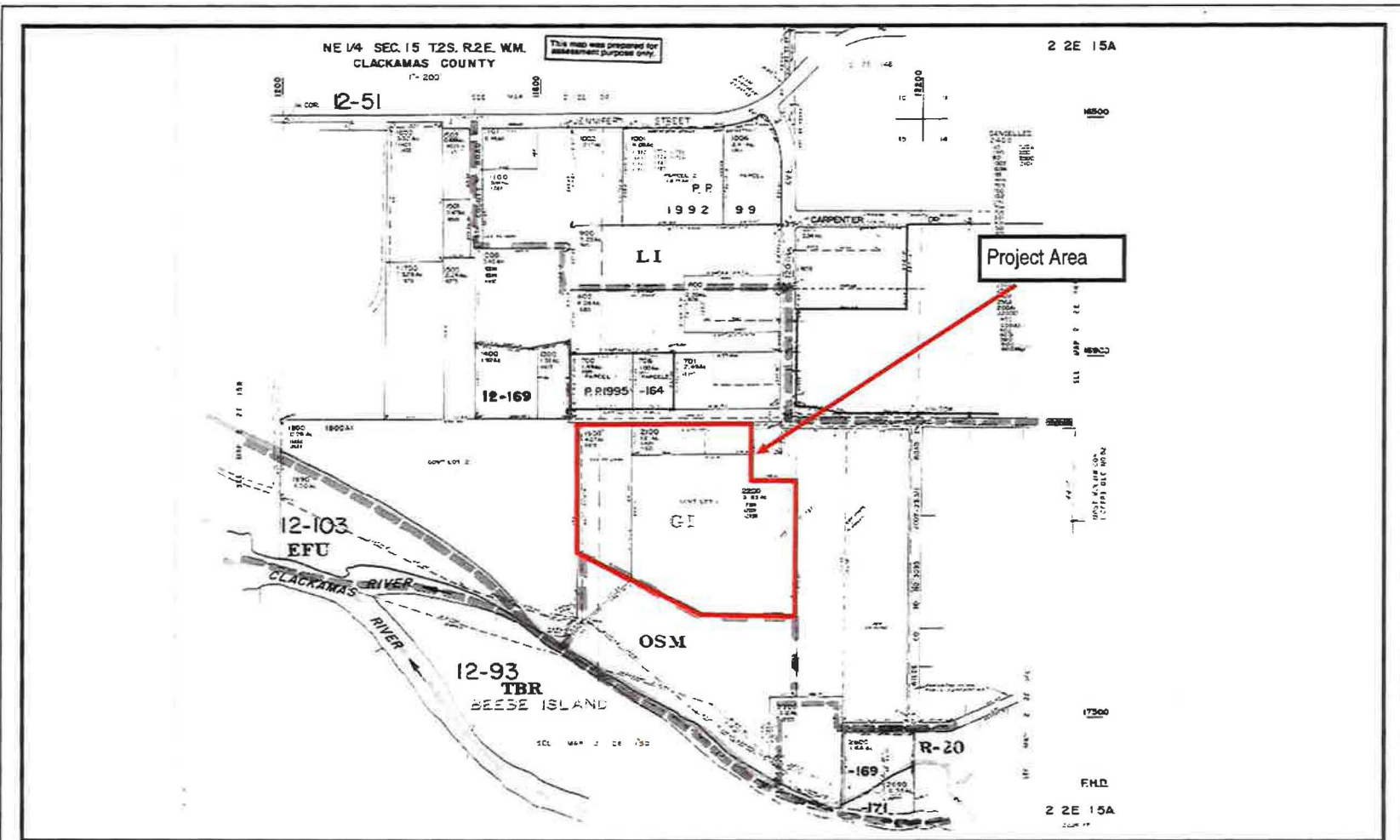
Property Owner Signature

DATE

Name (Please print)

Street Address

City, State, and Zip Code



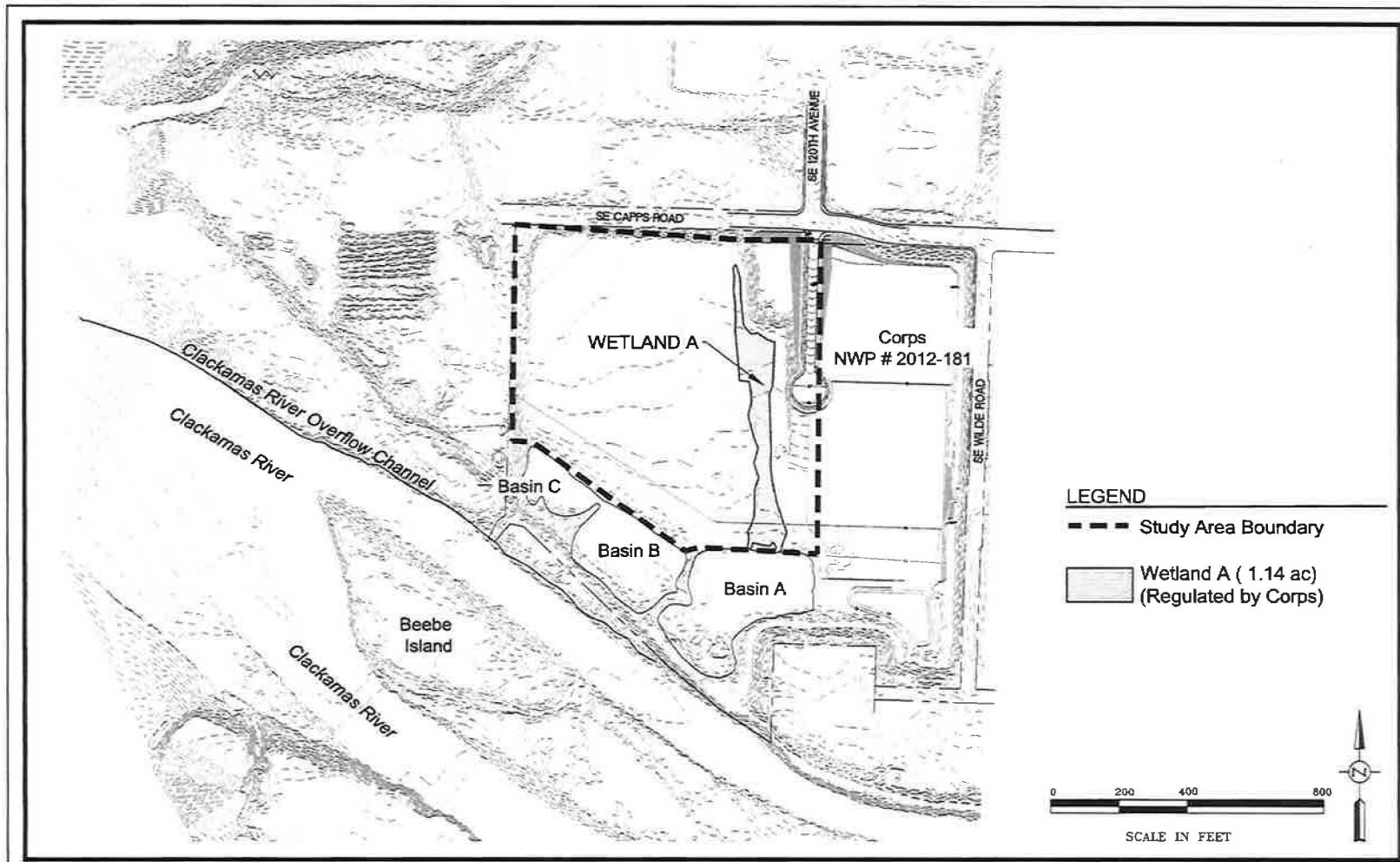
Project # 4870
Date 10/27/15



Pacific Habitat Services, Inc.
9450 SW Commerce Circle, Suite 180
Wilsonville, OR 97070

Tax Lot Map, Section 15A, Township 2 South, Range 2 East
Clackamas Industrial Area Opportunity Site in Clackamas County, Oregon
OrMap.net, 2015

FIGURE
2



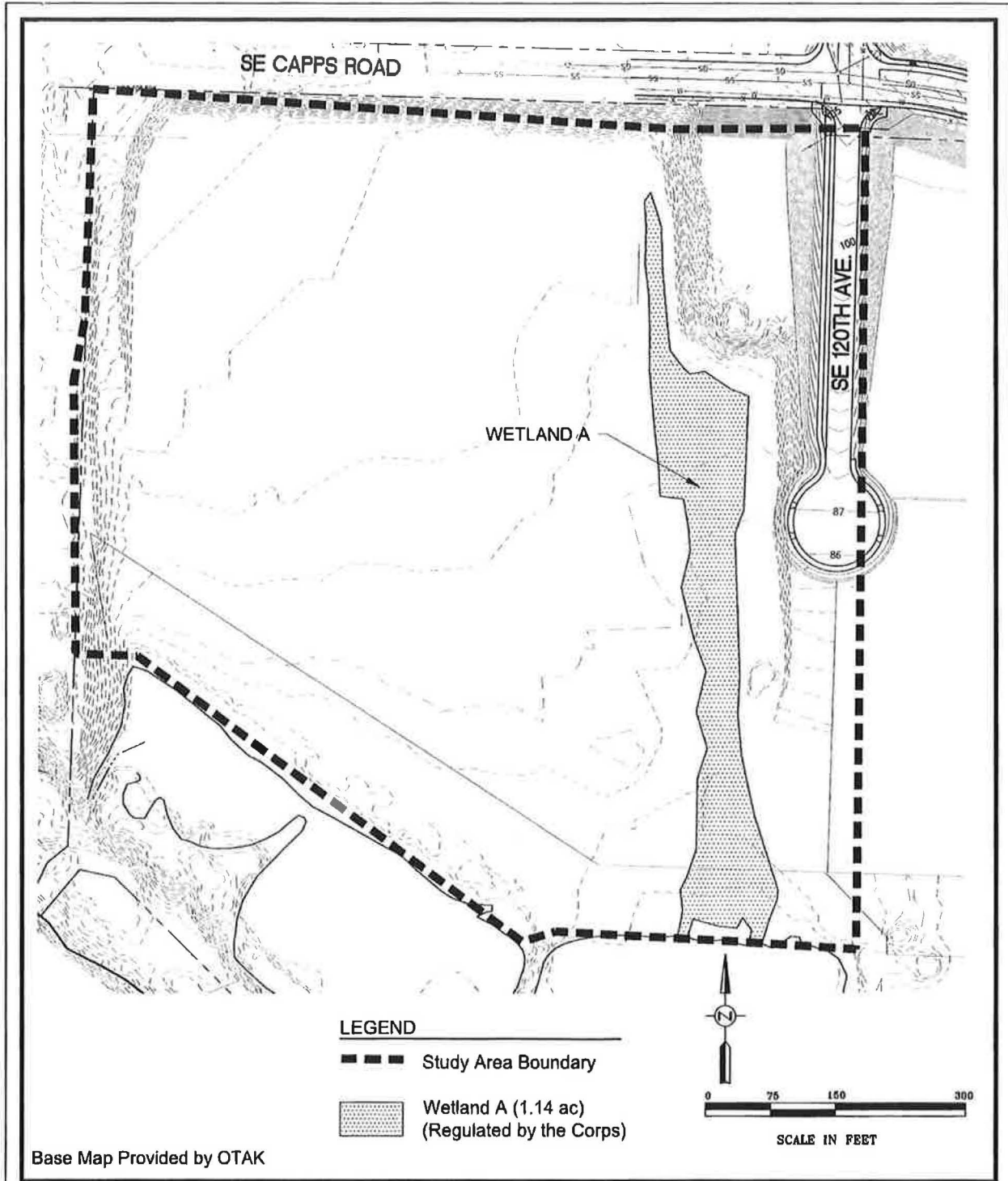
Base Map Provided by OTAK

Existing Conditions Site Overview
Capps Road Improvement Project - Oregon City, Oregon

FIGURE
4

1-22-2016

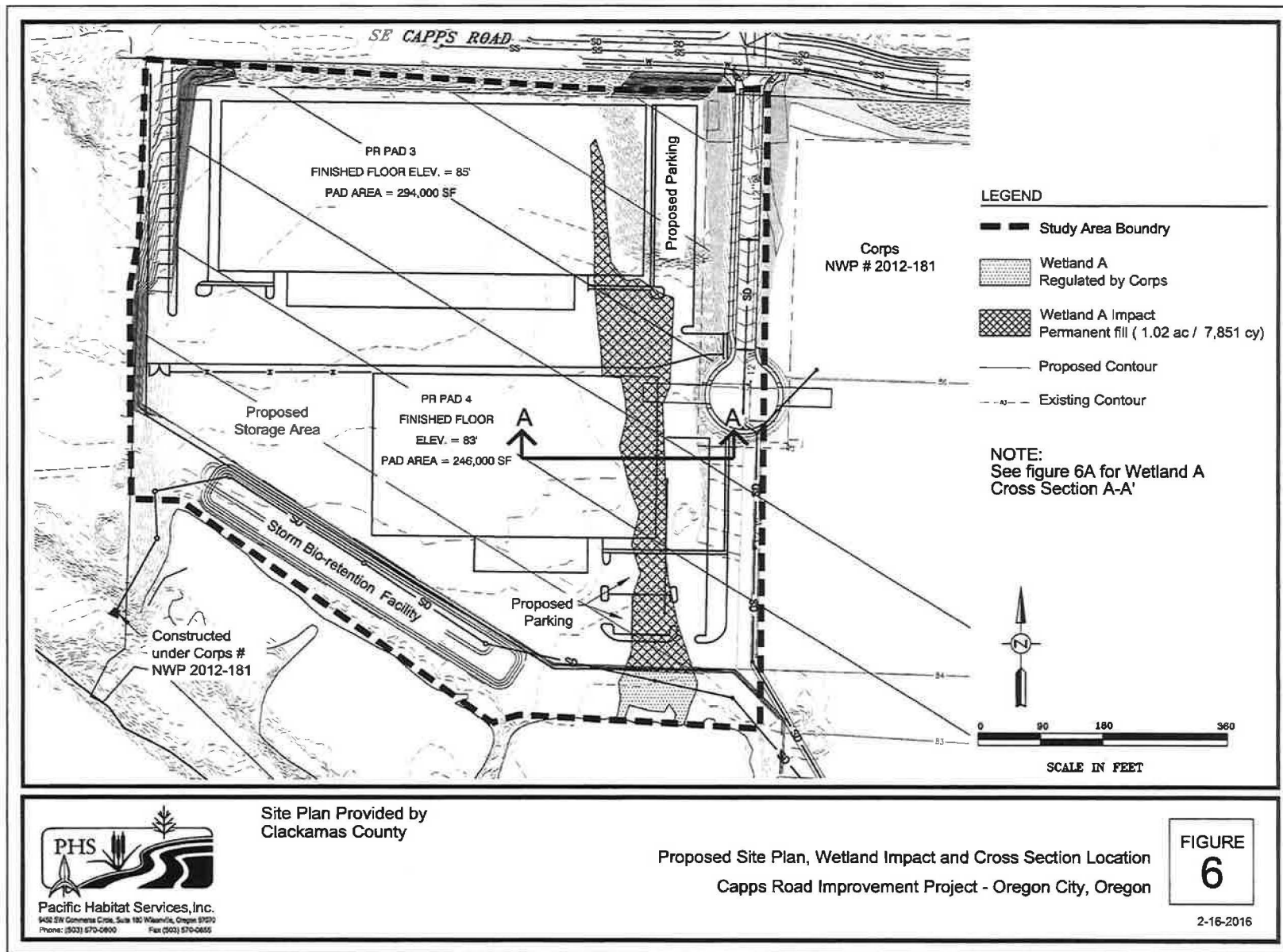
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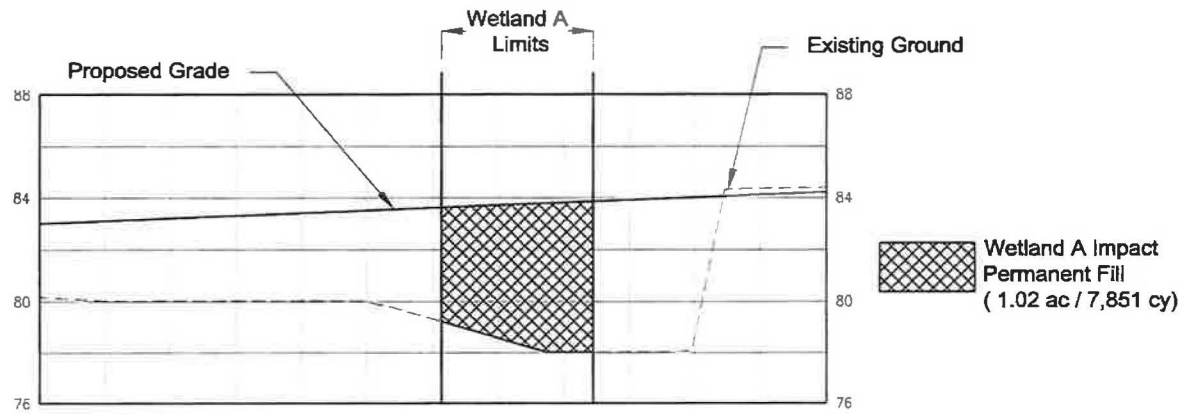
Existing Conditions
Capps Road Improvement Project - Oregon City, Oregon

FIGURE
4A
1-22-2016

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WETLAND A CROSS SECTION A-A'

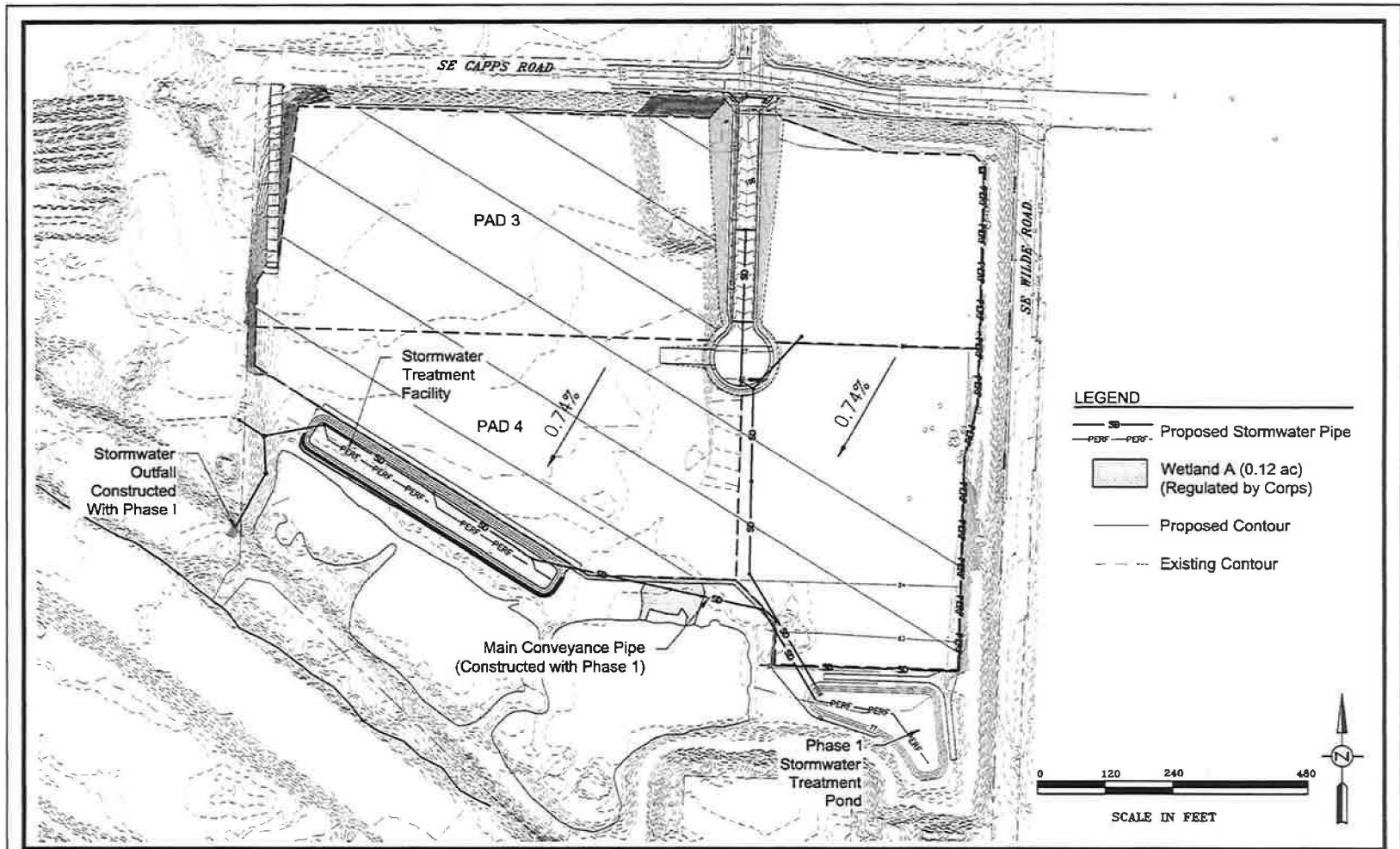
Cross Section Provided by OTAK



Wetland Impact Cross Section A-A'
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE
6A
 1-22-2016

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Plan Provided by OTAK

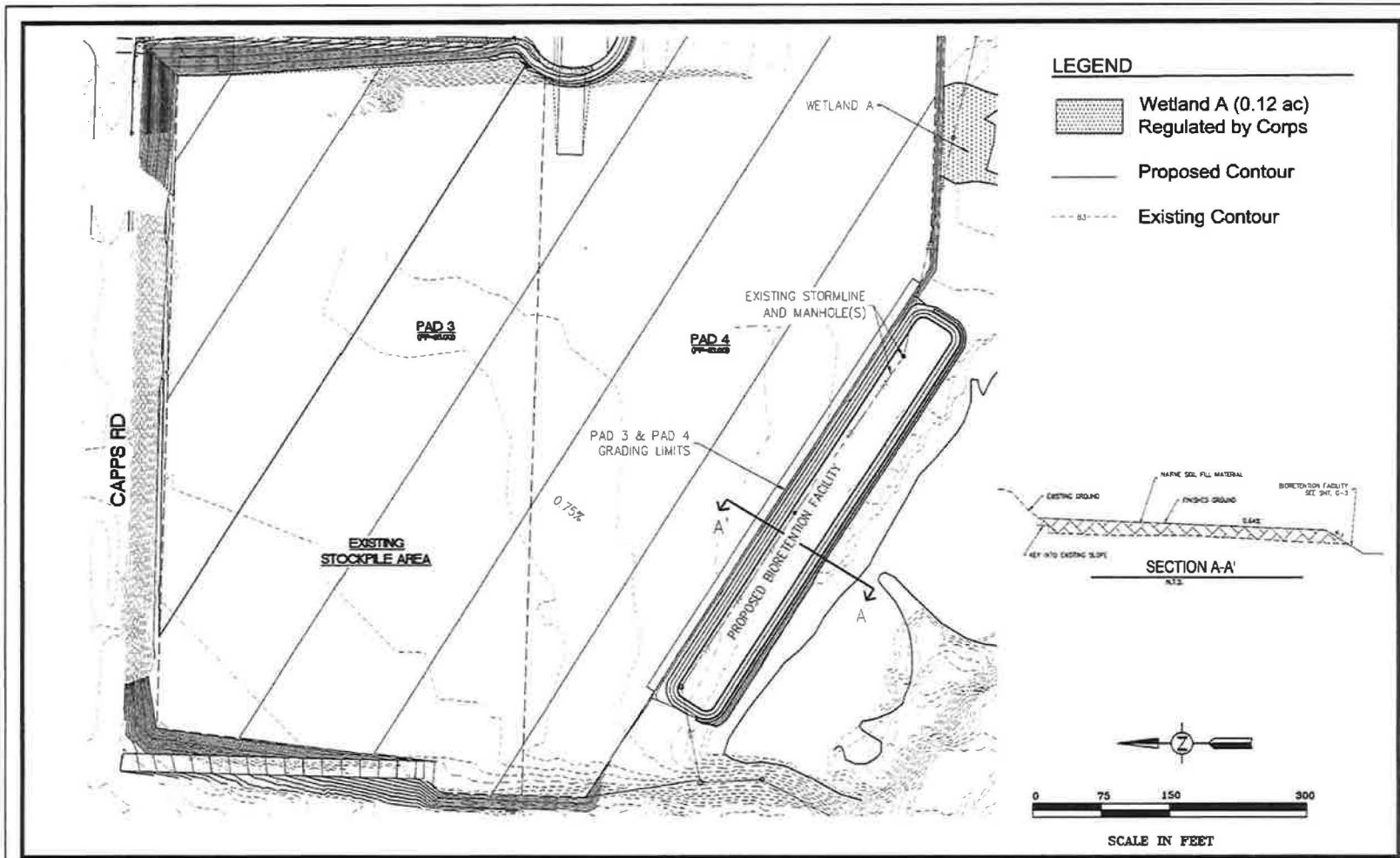
Pacific Habitat Services, Inc.
 8430 SW Commerce Glen, Suite 180, Wilsonville, Oregon 97150
 Phone: (503) 570-0600 Fax (503) 570-0555

Proposed Stormwater Plan
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE
7

2-16-2016

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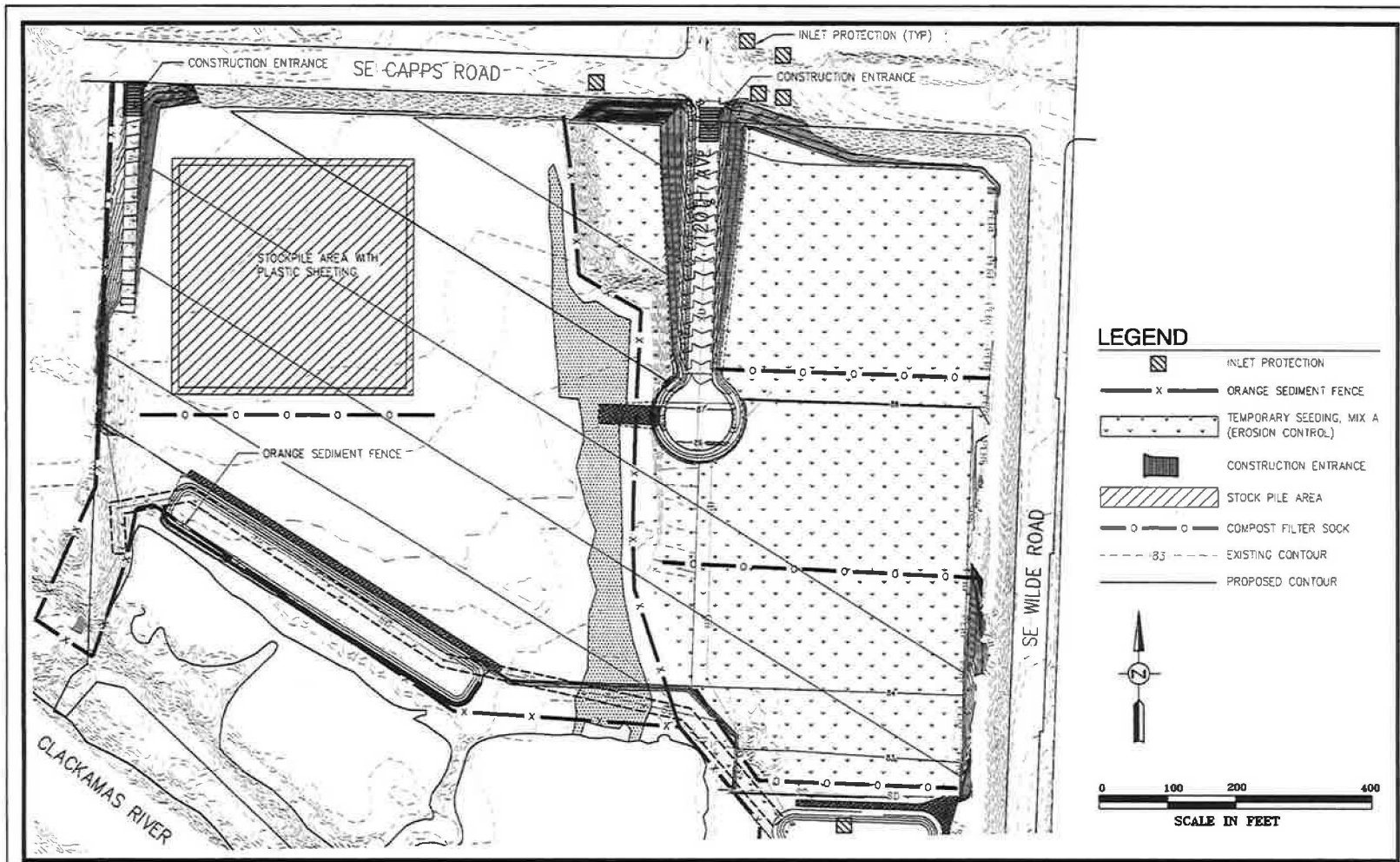
Plan Provided by OTAK

Proposed Grading Plan
Capps Road Improvement Project - Oregon City, Oregon

FIGURE
8

2-16-2016

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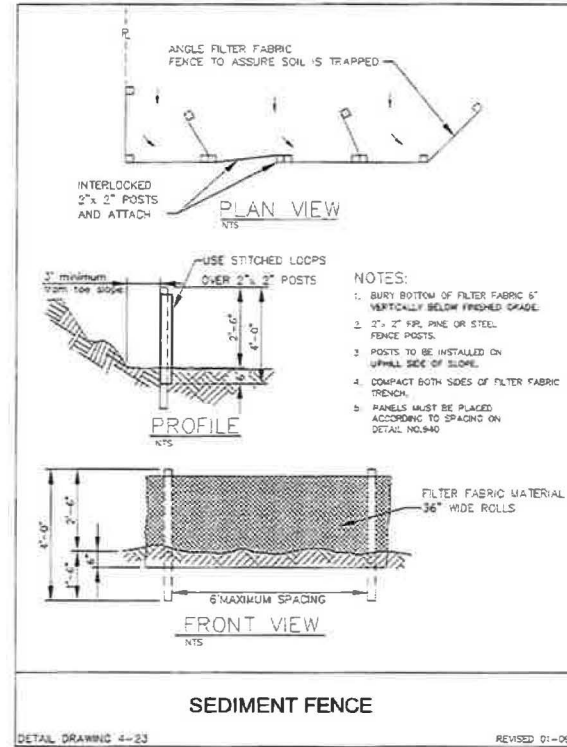
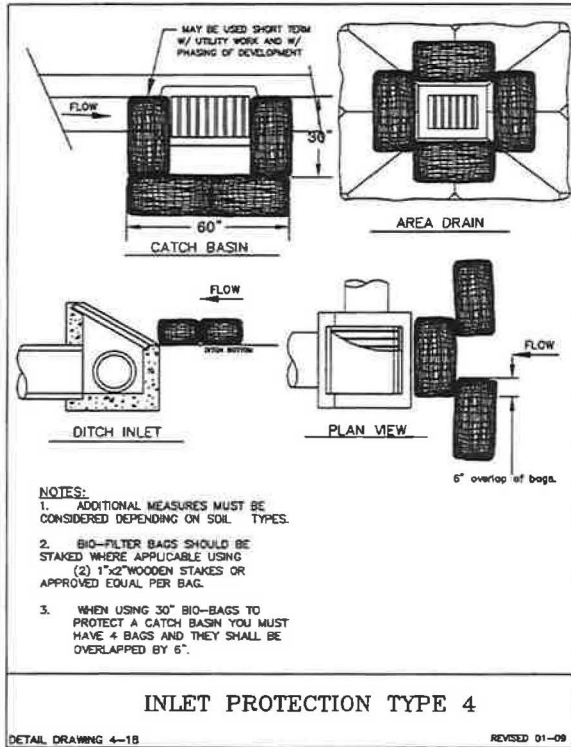


Plan Provided by OTAK

Erosion and Sediment Control Plan
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE
9
 1-22-2016

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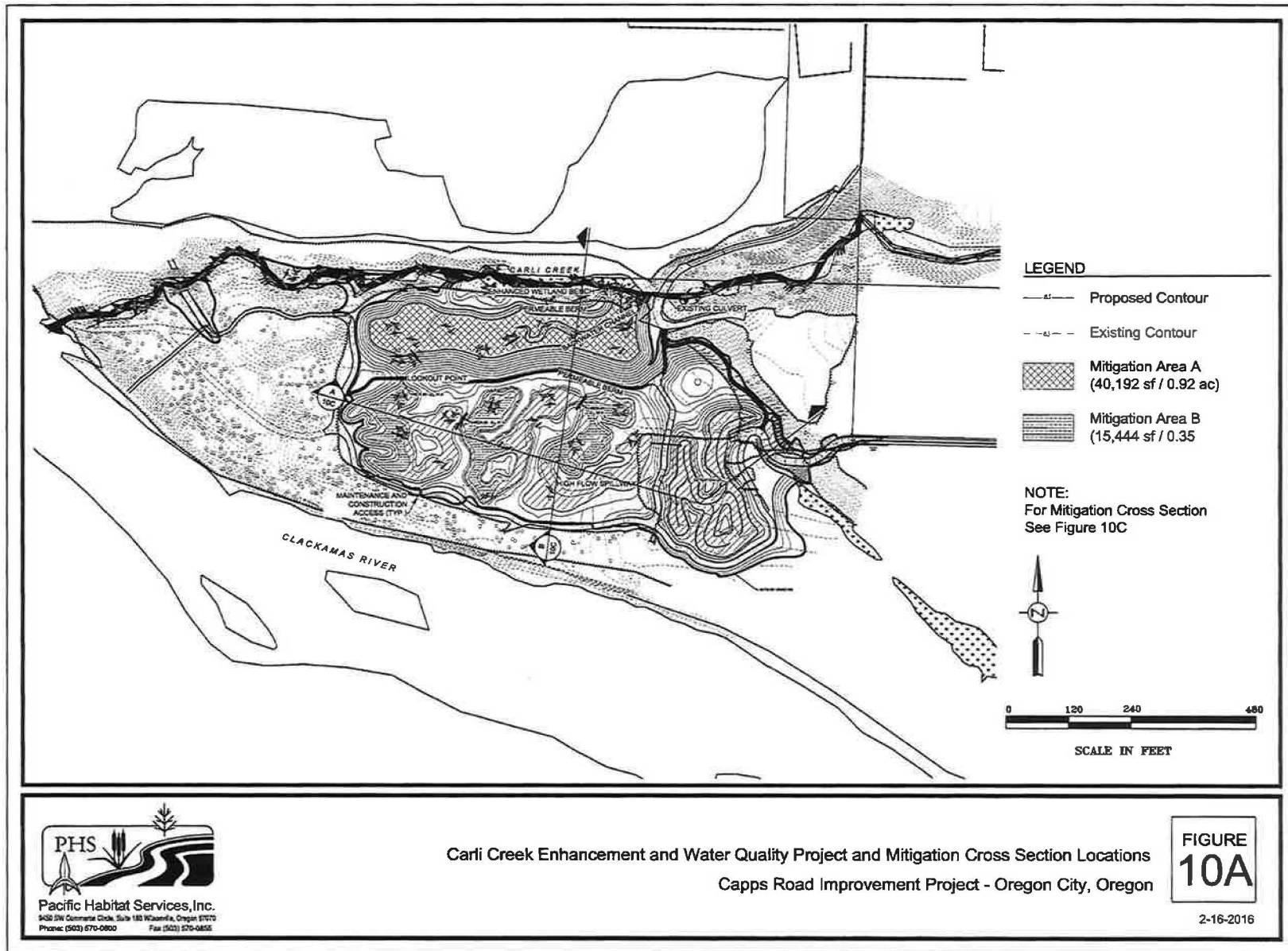


Details Provided By OTAK

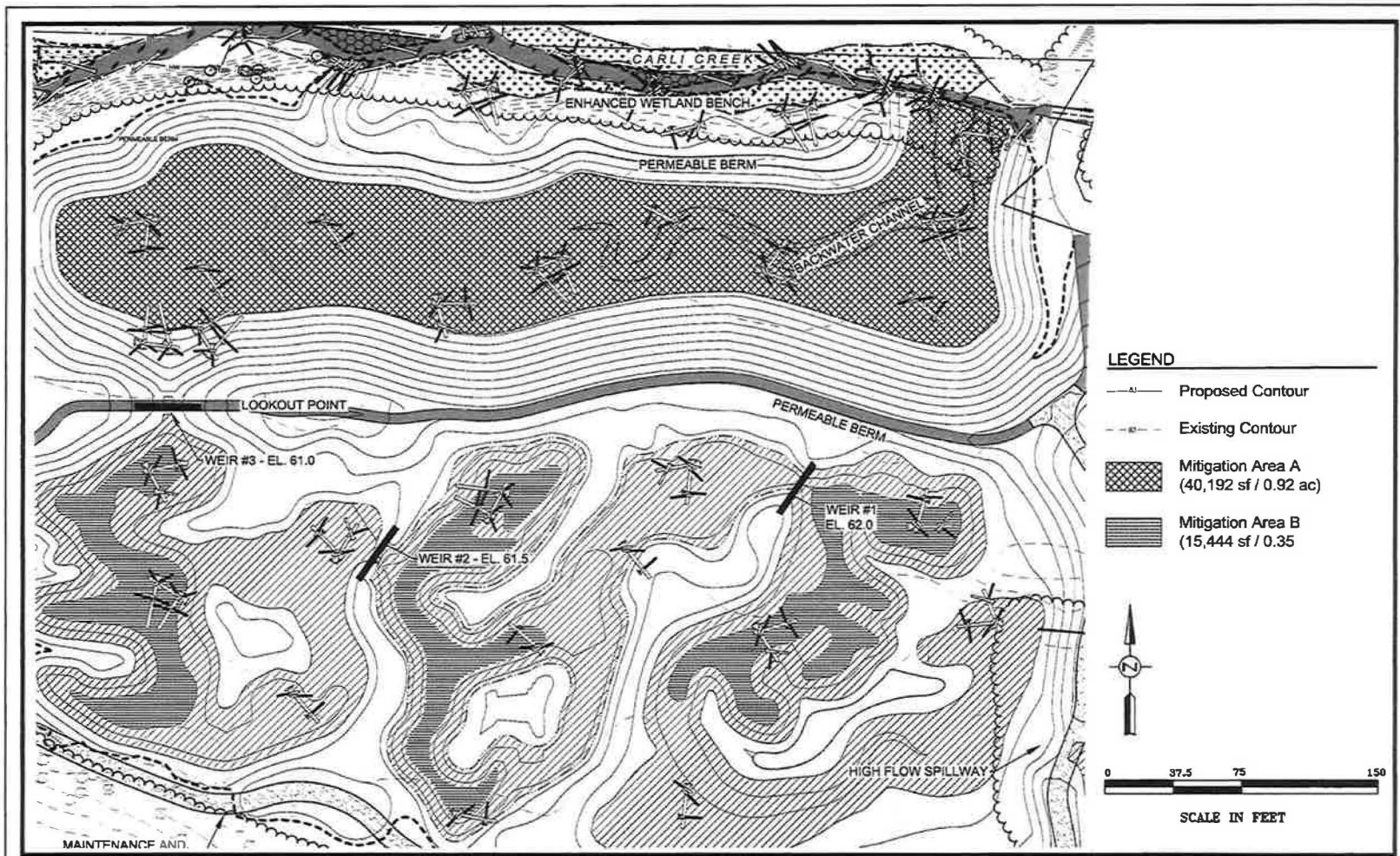
Erosion Control Details
Capps Road Improvement Project - Oregon City, Oregon

FIGURE
9A

1-22-2015



Carli Creek Enhancement and Water Quality Project and Mitigation Cross Section Locations
Capps Road Improvement Project - Oregon City, Oregon

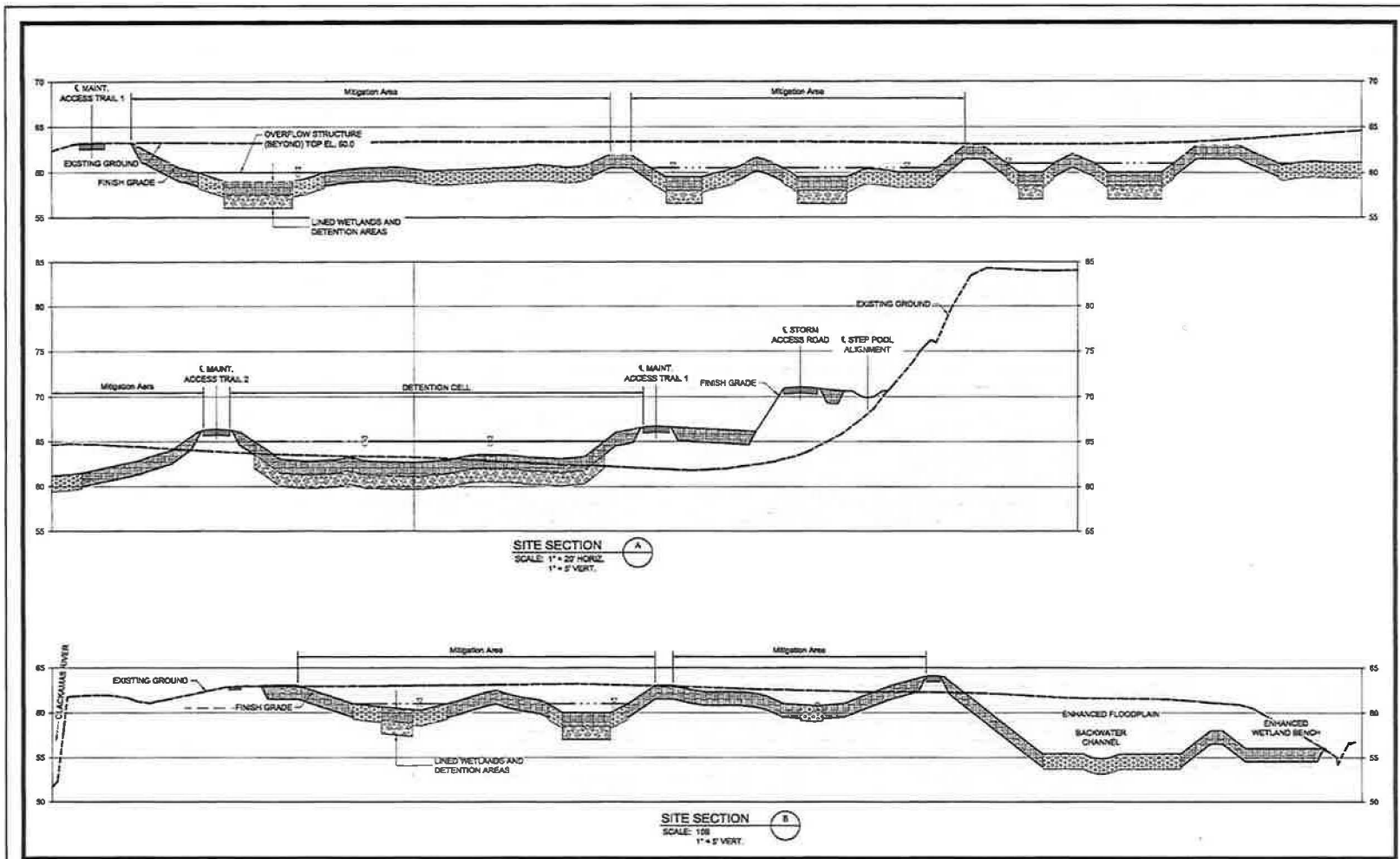


Mitigation Areas
 Capps Road Improvement Project - Oregon City, Oregon

FIGURE 10B

1-22-2016

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Mitigation Cross Section
Capps Road Improvement Project - Oregon City, Oregon

FIGURE
10C

2-2-2016

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Oregon

Kate Brown, 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

September 8, 2016

Clackamas County Industrial Park
Attn: Dan Johnson
150 Beaver Creek Road
Oregon City, OR 97045

RE: 2012-00181-1; Clackamas County Industrial Area 401 Water Quality Certification

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) Permit application #2012-00181-1, pursuant to a request for a Clean Water Act Section 401 Water Quality Certification (WQC) received on March 11, 2016. DEQ's 401 WQC public comment opportunity was circulated with the USACE public notice, and DEQ received no water quality comments.

According to the application, Clackamas County Industrial Park ("the Applicant") proposes to construct the second phase of an industrial development to provide facilities for future industrial tenants. The project is located at 1200 SE Capps Road adjacent to the Clackamas River, in the City of Happy Valley, Clackamas County, Oregon (Section 15, Township 2 South, Range 2 East).

Project Description: The Applicant will permanently impact 1.02 acres of palustrine forested wetlands to complete the build-out of two industrial pads, each with a warehouse, loading area, storage and parking. A total of 0.012 acres of wetlands will remain on-site. A stormwater detention pond that was constructed under a separate Nationwide Permit (NWP-2012-00181) will treat the runoff generated at the site. The Applicant proposes to mitigate for impacts by creating a total of 1.27 acres of wetlands located west of the project site adjacent to Carli Creek and the Clackamas River.

Status of Affected Waters of the State: The Clackamas River is classified as water quality limited under the federal Clean Water Act for flow and habitat modification. The Clackamas River is on the Section 303(d) list of impaired water bodies for dissolved oxygen, *E. coli*, biological criteria, and has Environmental Protection Agency (EPA) approved Total Maximum Daily Loads (TMDLs) that have been developed for bacteria, mercury and temperature.

The above listed parameters impair the following beneficial uses in the Clackamas River: aquatic life, water contact recreation, anadromous fish passage and fish rearing. Additional beneficial uses designated in the Clackamas River include public domestic water supply, private domestic water supply, industrial water supply, irrigation, livestock watering, fish & aquatic life, wildlife & hunting, fishing, boating, water contact recreation, aesthetic quality, and hydro power.

Certification Decision: Based on the information provided by the Applicant and the USACE, DEQ is reasonably assured that implementation of the project will be consistent with 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 strictly adhered to by the Applicant.

401 WQC GENERAL 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 401 WQC.
- 2) **Work Authorized:** Work authorized by this 401 WQC is limited to the work described in the Joint Permit Application signed on January 27, 2016 and additional 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.
- 3) **Duration of Certificate:** This 401 WQC for impacts to waters, including dredge and fill activities, is valid for five years from the date of issuance of the USACE 404 permit. A new or modified 401 WQC must be requested prior to any modification of the USACE 404 permit. Post-construction stormwater facilities must be maintained for the life of the facility.
- 4) A copy of this 401 WQC letter must be kept on the job site and readily available for reference by the Applicant or its contractors, as well as by DEQ, USACE, National Marine Fisheries Service (NMFS), Oregon Department of Fish and Wildlife (ODFW), and other appropriate state and local government inspectors.
- 5) **Modification:** Any approved modifications to this 401 WQC will incur a Tier 1 fee of \$985 at a minimum. Complex modifications may be charged a higher fee.
- 6) The Applicant must notify DEQ of any change in ownership or control of this project and obtain DEQ review and approval before undertaking any change to the project that might affect water quality.
- 7) 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.
- 8) The Applicant and its contractors must allow DEQ access to the project site, 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 operational equipment or methods;
 - c. To collect samples or monitor any discharge of pollutants.

- 9) 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.

CONSTRUCTION SPECIFIC CONDITIONS

- 10) **Erosion 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. **Any project that disturbs more than one acre is required to obtain an NPDES 1200-C construction stormwater permit from DEQ.** In addition, the Applicant (or responsible party) must do the following, unless otherwise authorized by DEQ in writing:
- a. Maintain an adequate supply of materials necessary to control erosion at the project construction site.
 - b. 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. Erosion of stockpiles is prohibited.
 - 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, the Applicant must mobilize immediately to make repairs, install replacements, or install additional controls as necessary.
 - ii. If sediment has reaches 1/3 of the exposed height of a sediment or erosion control, the 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.
 - h. This 401 WQC *does not* authorize the placement of BMPs into waters of the state unless specifically outlined in the application and authorized by DEQ.

- 11) **Deleterious Waste Materials:** The Applicant is prohibited from placing biologically harmful materials and construction debris including, but 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 where such materials could enter waters of the state, including wetlands (wetlands are waters of the state). The Applicant must do the following:
- a. Ensure concrete, cement, or grout is cured for at least 24 hours prior to 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 deleterious materials to surface or ground water;
 - 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; and
 - f. Employ general good housekeeping practices at all times.
- 12) **Spill Prevention:** The Applicant must fuel, operate, maintain and store vehicles, and must store construction materials, in areas that will not disturb habitat either directly or due to potential discharges. In addition, the following specific requirements apply:
- a. Vehicle staging, cleaning, maintenance, refueling, and fuel storage must take place in a vehicle staging area placed 150 feet or more from any waters of the state. An exception to this distance may be authorized upon written approval by DEQ if all practicable prevention measures are employed and this distance is not possible because of any of the following site conditions:
 - i. Physical constraints that make this distance not feasible (e.g., steep slopes, rock outcroppings);
 - ii. Natural resource features would be degraded as a result of this setback; or
 - iii. Equal or greater spill containment and effect avoidance is provided even if staging area is less than 150 feet of any waters of the state.
 - b. If staging areas are within 150 feet of any waters of the state, as allowed under subsection (a) of this condition, full containment of potential contaminants must be provided to prevent soil and water contamination, as appropriate.
 - c. All vehicles operated within 150 feet of any waters of the state must be inspected daily for fluid leaks before leaving the vehicle staging area. Any leaks detected in

the vehicle staging area must be repaired before the vehicle resumes operation.

- d. Before operations begin and as often as necessary during operation, equipment must be steam cleaned (or undergo an approved equivalent cleaning) until all visible external oil, grease, mud, and other visible contaminants are removed if the equipment will be used below the bank of a waterbody.
- e. All stationary power equipment (e.g., generators, cranes, stationary drilling equipment) operated within 150 feet of any waters of the state must be covered by an absorbent mat to prevent leaks, unless other suitable containment is provided to prevent potential spills from entering any waters of the state.
- f. An adequate supply of materials (such as straw matting/bales, geotextiles, booms, diapers, and other absorbent materials) needed to contain spills must be maintained at the project construction site and deployed as necessary.
- g. All equipment operated in state waters must use bio-degradable hydraulic fluid.

13) Spill & Incident Reporting:

- a. In the event that petroleum products, chemicals, or any other deleterious materials are discharged into state waters, or onto land with a potential to enter state waters, the Applicant must promptly report the discharge to the Oregon Emergency Response System (OERS, 1-800-452-0311). The Applicant must immediately begin containment and complete cleanup as soon as possible.
- b. If the project operations cause a water quality problem which results in distressed or dying fish, the Applicant must immediately: cease operations; take appropriate corrective measures to prevent further environmental damage; collect fish specimens and water samples; and notify DEQ, ODFW and other appropriate regulatory agencies.

14) Vegetation Protection and 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 demarcating construction areas; and/or
 - 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. The standard for success is 80% cover for native plant species. The vegetation must be reestablished by the completion of authorized work and

include the following:

- i. Restore damaged streambanks to a natural slope, pattern, and profile suitable for establishment of permanent woody vegetation, unless precluded by pre-project conditions (e.g., a natural rock wall).
 - ii. Replant or reseed each area requiring revegetation before the end of the first planting season following construction.
 - iii. Plant disturbed areas with native plants and trees in all cases except where the use of non-native plant materials may be essential for erosion control.
 - iv. The use of invasive species to re-establish vegetation is prohibited.
 - v. Herbicides, pesticides and fertilizers must be applied per manufacturer's instructions, and only if necessary for vegetation establishment.
 1. Unless otherwise approved in writing by DEQ, applying surface fertilizer within stormwater treatment facilities or within 50 feet of any stream channel is prohibited.
 2. Other than spot application to cut stems, no herbicides are allowed within stormwater treatment facilities or within 150 feet of waters of the state. Mechanical, hand, or other methods may be used to control weeds and unwanted vegetation within stormwater treatment facilities or within 150 feet of waters of the state.
 3. No pesticides may be used within stormwater treatment facilities or within 150 feet of waters of the state.
 - vi. Install wildlife-friendly fencing as necessary to prevent access to revegetated sites by livestock or unauthorized persons.
 - vii. Minimize soil compaction, especially in areas that are designated to be replanted. If soils are compacted, decompact staging areas and work construction areas prior to replanting. Leave topsoil when possible. Chip materials from clear and grub operation and spread on soil surface, unless cleared areas contained invasive species.
- 15) Provide a minimum 50-foot buffer zone to protect existing riparian areas and wetlands, unless otherwise authorized in writing by DEQ.
- 16) **Notification to DEQ:** The Applicant must provide pre-construction notification to DEQ one week prior to the start of construction. Contact information can be found at the end of this 401 WQC.

SPECIFIC CONDITIONS FOR POST CONSTRUCTION STORMWATER MANAGEMENT

- 17) **Post Construction Stormwater Management:** The Applicant must implement and comply with the terms of the approved post-construction stormwater management plan, which describes best management practices (BMPs) to prevent or treat pollution in stormwater anticipated to be generated by the project, in order to comply with state water quality standards. The Applicant must implement BMPs as proposed in the stormwater management plan, including operation and maintenance, dated January 27, 2016. If proposed stormwater facilities change due to site conditions, the Applicant must notify DEQ, and receive approval in writing

To treat stormwater, the Applicant has constructed a stormwater detention pond that was previously permitted for the first phase of this project (USACE Project # NWP-2012-00181). The pond will treat runoff from the parcels of both phases of the development based on no more than 85% impervious area. Runoff will be treated in the vegetated stormwater pond and then will be piped through a conveyance system to an approved discharge location on the Clackamas River.

Within 30 days of project completion, the Applicant must submit a copy of the 'As-Builts' or red-lined construction drawings showing all stormwater management facilities.

- 18) **Stormwater Management & System Maintenance:** The Applicant is required to implement effective operation and maintenance practices for the lifetime of the proposed facility. These include but are not limited to:
- a. Maintenance techniques and frequency for each system component must follow appropriate recommendations in accepted manuals.
 - b. Long-term operation and maintenance of stormwater treatment facilities will be the responsibility of the Clackamas County Development Agency, unless and until an agreement transferring that responsibility to another entity is submitted to DEQ.
- 19) **Corrective Action May Be Required:** The Department retains the authority to require corrective action in the event the stormwater management facilities are not built or performing as described in the plan.

If the Applicant is dissatisfied with the conditions contained in this 401 WQC, a contested case hearing may be requested in accordance with OAR 340-048-0045. Such request must be made in writing to the DEQ Office of Compliance and Enforcement at 811 SW 6th Avenue, Portland Oregon 97204 within 20 days of the mailing of this 401 WQC.

DEQ hereby certifies this project in accordance with the Clean Water Act and state rules, with the above conditions. If you have any questions, please contact Roxann Nayar at nayar.roxy@deq.state.or.us, by phone at 503-229-6414, or at the address on this letterhead.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Mrazik', written over a light blue horizontal line.

Steve Mrazik
Water Quality Manager
Northwest Region

2012-00181-1_ClackamasCoIndustrialPark_401 WQC_Final.docm

cc: Dominic Yballe, USACE
Anita Huffman, DSL
Marc Liverman, NOAA FISHERIES
Ashley Cantlon, OTAK



US Army Corps
of Engineers®
Portland District

Compliance Certification

- 1. **Permit Number:** NWP-2012-181-1
- 2. **Permittee Name:** Clackamas County Development Agency
- 3. **County Location:** Clackamas

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

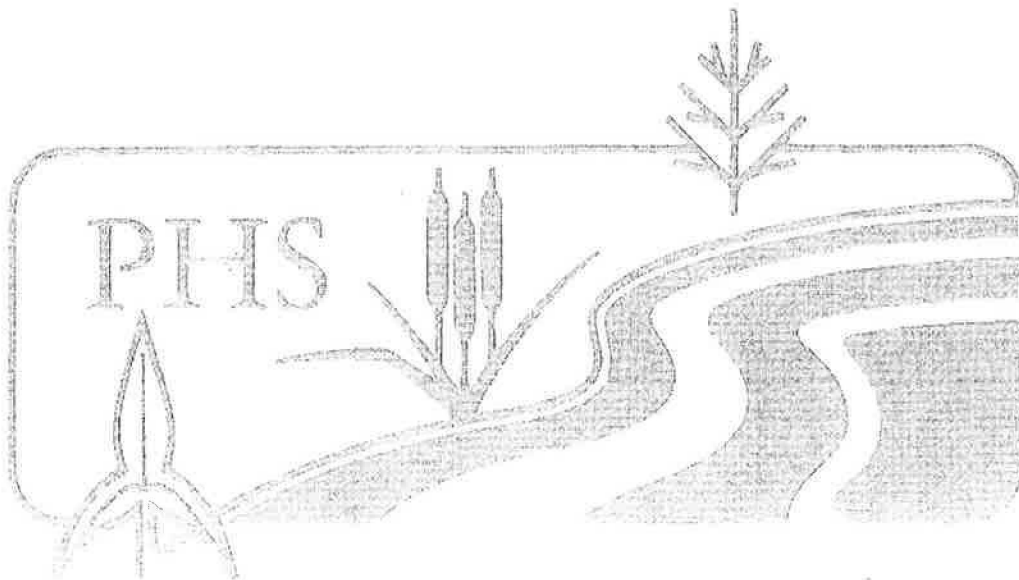
I hereby certify the work authorized by the above-referenced permit has been completed in accordance with all of the permit terms and conditions.

Signature of Permittee

Date

Attachment 5

Compensatory Wetland Mitigation Plan



**FINAL COMPENSATORY WETLAND MITIGATION PLAN
FOR IMPACTS TO WETLANDS FOR THE CAPPS ROAD INDUSTRIAL
SITE IN CLACKAMAS, OREGON**

**U.S. Army Corps of Engineers Permit No. NWP 2012-181(1)
January 28, 2016**

Below is a description of the Clackamas County Development Agency's proposed Compensatory Wetland Mitigation (CWM) Plan following the provisions of 33 CFR 332.4(c) 2 through (c) 14.

Objectives:

The primary objective is to provide wetland habitat as compensation for 1.02 acres of wetland impact. Four areas of wetland will be created, one area that is permanently inundated, and three areas that are seasonally inundated. The water for these wetlands will come from a stormwater facility associated with Carli Creek to the north of the mitigation site. The permanently inundated wetland will be also augmented with backwater flows from Carli Creek.

Site Selection:

Several options for mitigation of the impact were examined.

- 1) Filling the dragline quarried ponds (Basins A, B and C) (45.3967, -122.5406) located south of the impact site from their existing considerable depth to form a shallow wetland was considered and deemed unfeasible because of the significant amount of soil materials required to fill the ponds.
- 2) Extend a thin sliver of wetland (45.3989, -122.5459) at the base of a western slope of the recycling facility to the west of the former gravel pit was considered. The groundwater gradient to the Clackamas River along the terrace edge near the river probably makes the possibility of persistent wetland conditions over the requisite area unlikely.
- 3) Preferred Option: A regional stormwater plan (45.4001, -122.5487) for Carli Creek discharging to the Clackamas River to the west of the proposed project. This includes the possibility of wetland creation adjacent to stormwater treatment cells fed by treated stormwater discharge from nearby industrial facilities. Stormwater is to be treated in cells that will maintain hydrology for the adjacent created wetland.

Site Protection Instrument:

Clackamas County will record a conservation easement over the mitigation site. The easement will ensure long term protection of the mitigation areas. The conservation easement will be recorded at the completion of the monitoring period and will include the following:

- a. Identification of a third-party easement holder with a summary of the selected holder's capacity to ensure the WES's compliance with the Long-term Maintenance and Management Plan;
- b. Provisions for ensuring the maintenance and protection of the mitigation site from any conflicting uses; and
- c. Provisions requiring a 60-day advance notification to the Corps before any action is taken to void or modify the site protection instrument, or establish any other legal claims over the mitigation site.

Baseline Information:

The proposed mitigation site is along the north side of the Clackamas River south of the historic channel of Carli Creek, which discharges to the Clackamas River west of the proposed mitigation site. The site is east of a meander in the Clackamas River where the river appears to meet the northern edge of its meander belt (along the trajectory of Carli Creek). Several terrace scarps east of the mitigation site trend northwest-southeast from the edge of the meander belt to the Clackamas River. Terrace materials consist of Clackamas River alluvium that has been quarried for aggregate in several nearby areas (including the impact site). Historic aerial photographs suggest that the site has been used for pasture and haying for several decades. Herrera, Inc., which prepared the overall plan under contract with Water Environment Services (WES), has proposed a regional stormwater plan for industrial runoff that is discharged to Carli Creek along the north side of the proposed mitigation site.

After initial treatment near the creek, water will be discharged to mitigation areas south of the creek. These shallow basins are a maximum of 3 feet deep. Geotechnical investigations of the proposed mitigation site suggest that permeability of soil surface horizons can be made sufficiently low to maintain wetland hydrology. The stormwater inputs from Carli Creek that provide hydrology for the mitigation area will be seasonal with late summer drying of the mitigation site. Hydrologic modeling by Herrera indicates that the excavated wetland cells will remain inundated between 0.5 and 2.5 feet for 30 days during the wettest portion of the year. The site adjoins the Clackamas River riparian zone and the mitigation can be considered an extension of the river riparian zone. The total area of permanent wetland creation is 0.92 acre.

An additional area of mitigation is located just north of the shallow, stormwater treatment basins. This area is adjacent to a backwater channel of Carli Creek, and is separated from the stormwater treatment basins by a permeable berm. This area is expected to be permanently inundated throughout most years. The total area of seasonal wetland creation is 0.35 acre.

Determination of Credits:

The wetland to be impacted totals 1.02 acres. The areas of wetland designated by Herrera as wetland mitigation area totals 1.27 acres, and additional areas of emergent, scrub-shrub, and forested riparian areas will be created along Carli Creek, contributing to increased water quality and wildlife habitat adjacent to the mitigation wetlands.

An HGM rating of the proposed site was compared to an HGM rating of the impacted area. All of the wetland functions in the proposed site were greater than the functions in the impacted wetland except Nitrogen Removal, Primary Production, and Amphibian and Reptile Habitat. However, these functions are only slightly lower in the created wetlands as compared to the impact wetland. The proposed mitigation site will be contiguous with the riparian zone of the Clackamas River and may be considered an extension of the riparian zone.

Function:	Calculated Function Capacity for SF sites					
	Wetland A (Existing)		Permanent Wetland Creation		Seasonal Wetland Creation	
	if HFR:	if LAR:	if HFR:	if LAR:	if HFR:	if LAR:
Water Storage & Delay (ws)	0.50	1.11	0.50	1.11	0.75	1.67
Sediment Stabilization & Phosphorus Retention (sp)	0.57	0.61	0.74	0.79	1.00	1.07
Nitrogen Removal (n)	0.73	0.86	0.57	0.67	0.84	0.99
Primary Production (pp)	0.67	0.67	0.52	0.52	0.62	0.82
Invertebrate Habitat Support (i)	0.22	0.22	0.23	0.23	0.30	0.30
Amphibian & Turtle Habitat (at)	0.60	0.79	0.53	0.70	0.58	0.76
Breeding Waterbird Support (bw)	0.00	0.00	0.98	1.13	0.00	0.00
Wintering & Migrating Waterbird Support (ww)	0.41	0.47	0.43	0.50	0.54	0.62
Songbird Habitat Support (sb)	0.34	0.53	0.89	1.36	0.66	1.01
Support of Characteristic Vegetation (v)	0.39	0.41	0.63	0.65	0.55	0.57

Mitigation Work Plan:

Construction of the proposed mitigation areas will be done in conjunction with construction of the Carli Creek stormwater treatment system. Construction of the mitigation site will be done in late summer before Carli Creek is allowed to flood into the site. Seeding of the created wetland areas will be done by the first of September 2016. Planting of the woody plants in the constructed mitigation site will be done during the late winter and early spring after construction is complete and stormwater from Carli Creek has been diverted into the site. Emergent plantings will be installed in late spring immediately before temporary irrigation is begun.

The wetland creation area will be planted with a minimum stem count of 1,600 stems per acre. The following table shows the native species to be planted within the mitigation wetland areas.

Table 1. Wetland Mitigation Areas A and B (55,636 sq. ft.)

Botanical Name	Common Name	Stock Type
Trees		
<i>Fraxinus latifolia</i>	Oregon ash	Seedling 3"+
<i>Populus balsamifera</i>	Black cottonwood	Seedling 3"+
<i>Alnus rubra</i>	Red alder	Seedling 3"+
Shrubs		
<i>Cornus sericea</i>	Red-osier dogwood	6' live stake
<i>Physocarpus capitatus</i>	Pacific ninebark	Seedling 36"+
<i>Rosa nutkana</i>	Nootka rose	Seedling 36"+

Botanical Name	Common Name	Stock Type
<i>Rosa pisocarpa</i>	Swamp rose	Seedling 36"+
<i>Spiraea douglasii</i>	Douglas spiraea	Seedling 12"-18"
<i>Salix hookeriana</i>	Piper's willow	6' live stake
<i>Salix scouleriana</i>	Scouler willow	6' live stake
<i>Salix sitchensis</i>	Sitka willow	6' live stake
Herbs		
<i>Camassia quamash</i>	Camas	Bulb
<i>Carex amplifolia</i>	Big-leaf sedge	10" plug
<i>Carex deweyana</i>	Dewey's sedge	10" plug
<i>Carex obturata</i>	Slough sedge	10" plug
<i>Carex unilateralis</i>	One-side sedge	10" plug
<i>Eleocharis obtuse</i>	Ovate spikerush	10" plug
<i>Juncus acuminatus</i>	Tapertip rush	10" plug
<i>Juncus ensifolius</i>	Dagger-leaf rush	10" plug
<i>Juncus patens</i>	Spreading rush	10" plug
<i>Juncus tenuis</i>	Slender rush	10" plug
<i>Schoenoplectus acutus</i>	Hard-stemmed bulrush	10" plug
<i>Scirpus microcarpus</i>	Small-fruited bulrush	10" plug

Maintenance Plan:

A temporary irrigation system will be installed for the first 2 years of plant establishment. The irrigation system will be operated weekly and provide the equivalent of 1.5 inches of rainfall at a rate no greater than 2 inches per hour. Weed control will be done on a monthly basis through the growing season.

Performance Standards:

At the end of 2 years after construction of the mitigation site, 80% of the installed woody plants will be alive. Native groundcover will cover 80% of the area at the end of 3 years. The mitigation site will meet wetland criteria at the end of 5 years.

Monitoring Requirements:

As-Built Report:

An as-built of the constructed facility surface elevations will be submitted to the Corps within 60 days of the construction completion.

Annual Monitoring Reports:

Annual monitoring reports will be submitted to the Corps by the end of the calendar year for each of the 5 years following the construction of the mitigation site. The reports will document survival of the woody plantings and provide estimates of the areal fraction of groundcover species. Sampling of the woody vegetation will be done with randomly positioned 15-foot radius discs throughout the mitigation site covering at least 5% of the mitigation area. Forb sampling will be done with 2 square meter quadrats for each of the woody plant sampling points.

The emergent wetland will be sampled with square meter quadrats covering at least 1% of the emergent wetland area. Hydrology of the mitigation area will be monitored between the vernal equinox and the summer solstice. Photographs of the mitigation site from established photopoints will be submitted with each annual monitoring report. Analyses of temporal vegetation changes and recommendations for vegetation management will be submitted with each report. During the 5th year, a delineation of the mitigation site will be done to determine if the mitigation site meets wetland criteria.

Long-term Maintenance and Management Plan:

Long-term maintenance of the mitigation site will be done by WES. Continuing maintenance will mainly consist of weed management after the 5-year establishment period.

Financial Assurances:

Should the Corps feel that financial assurance is required, WES will financially commit (e.g. bond) to ensure the mitigation is a success.



**US Army Corps
of Engineers**

REGULATORY GUIDANCE LETTER

No. 08-03

Date: 10 October 2008

SUBJECT: Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources.

1. Purpose and Applicability

a. Purpose. This Regulatory Guidance Letter (RGL) provides the Districts and regulated public guidance on minimum monitoring requirements for compensatory mitigation projects, including the required minimum content for monitoring reports. This RGL replaces RGL 06-03.

b. Applicability. The final Mitigation Rule published on April 10, 2008, states that the submission of monitoring reports to assess the development and condition of compensatory mitigation projects is required, but the content and level of detail for those reports must be commensurate with the scale and scope of the compensatory mitigation projects as well as the compensatory mitigation project type (see 33 CFR 332.6(a)(1)).

This RGL applies to all Department of the Army (DA) permit authorizations under Section 404 of the Clean Water Act and Sections 9 and 10 of the Rivers and Harbors Act that contain special conditions requiring compensatory mitigation provided through aquatic resource restoration, establishment and/or enhancement. This guidance also applies to monitoring reports that are prepared for mitigation bank sites and in-lieu-fee project sites.

This RGL supports the Program Analysis and Review Tool (PART) program goals for the Regulatory Program. Specifically, this RGL supports the PART performance measures for mitigation site compliance and mitigation bank/ in-lieu-fee compliance. These measures apply to active mitigation sites, mitigation banks, and in-lieu-fee project sites that still require monitoring.

2. Background

Recent studies by the Government Accountability Office (GAO) and National Research Council (NRC) indicated that the U.S. Army Corps of Engineers (Corps) was not providing adequate oversight to ensure that compensatory mitigation projects were successfully replacing the aquatic resource functions lost as a result of permitted activities. For example, the GAO study determined that many project files requiring

mitigation lacked monitoring reports despite the fact that such reports were required as a condition of the permit. Similarly, the NRC study documented that a lack of clearly stated objectives and performance standards in the approved compensatory mitigation proposals made it difficult to ascertain whether the goal of no net loss of wetland resources was achieved.

On April 10, 2008, the Corps and Environmental Protection Agency published the “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule” (Mitigation Rule) which governs compensatory mitigation for activities authorized by permits issued by the Department of the Army (33 CFR Parts 325 and 332). This RGL complements and is consistent with the final Mitigation Rule.

3. Discussion

Inconsistent approaches to monitoring compensatory mitigation projects are one of several factors that have affected the ability of Corps project managers (PMs) to adequately assess achievement of the performance standards of Corps-approved mitigation plans. Standardized monitoring requirements will aid PMs when reviewing compensatory mitigation sites, thereby allowing the Corps to effectively assess the status and success of compensatory mitigation projects.

This RGL addresses the minimum information needed for monitoring reports that are used to evaluate compensatory mitigation sites. Monitoring requirements are typically based on the performance standards for a particular compensatory mitigation project and may vary from one project to another.

Monitoring reports are documents intended to provide the Corps with information to determine if a compensatory mitigation project site is successfully meeting its performance standards. Remediation and/or adaptive management used to correct deficiencies in compensatory mitigation project outcomes should be based on information provided in the monitoring reports and site inspections.

4. Guidance

a. Monitoring guidelines for compensatory mitigation.

i. Performance Standards. Performance standards, as defined in 33 CFR 332.2, and discussed in more detail at 33 CFR 332.5, will be consistent with the objectives of the compensatory mitigation project. These standards ensure that the compensatory mitigation project is objectively evaluated to determine if it is developing into the desired resource type and providing the expected functions. The objectives, performance standards, and monitoring requirements for compensatory mitigation projects required to offset unavoidable impacts to waters of the United States must be provided as special conditions of the DA permit or specified in the approved final mitigation plan (see 33 CFR 332.3(k)(2)). Performance standards may be based on functional, conditional, or other suitable assessment methods and/or criteria and may be incorporated into the

special conditions to determine if the site is achieving the desired functional capacity. Compensatory mitigation projects offset the impacts to diverse types of aquatic resources, including riverine and estuarine habitats. Special conditions of the DA permits will clearly state performance standards specific to the type and function of the ecosystem in relation to the objectives of the compensatory mitigation project.

ii. Monitoring Timeframe. The special conditions of the DA permit (or the mitigation plan as referenced in the special conditions) must specify the length of the monitoring period (see 33 CFR 332.6(a)(1)). For mitigation banks, the length of the monitoring period will be specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. For in-lieu fee projects, the length of the monitoring period will be specified in either the DA permit or the approved in-lieu fee project plan.

The monitoring period must be sufficient to demonstrate that the compensatory mitigation project has met performance standards, but not less than five years (see 33 CFR 332.6(b)). The District determines how frequently monitoring reports are submitted, the monitoring period length, and report content. If a compensatory mitigation project has met its performance standards in less than five years, the monitoring period length can be reduced, if there are at least two consecutive monitoring reports that demonstrate that success. Permit conditions will support the specified monitoring requirement and include deadlines for monitoring report submittal. Longer monitoring timeframes are necessary for compensatory mitigation projects that take longer to develop (see 33 CFR 332.6(b)). For example, forested wetland restoration may take longer than five years to meet performance standards.

Annual monitoring and reporting to the Corps is appropriate for most types of compensatory mitigation projects, though the project sponsor may have to monitor progress more often during the project's early stages. Certain compensatory mitigation projects may require more frequent monitoring and reporting during the early stages of development to allow project managers to quickly address problems and/or concerns. Annual monitoring can resume once the project develops in accordance with the approved performance standards. In cases where monitoring is required for longer than five years, monitoring may be conducted on a less than annual timeframe (such as every other year), though yearly monitoring is recommended until the project becomes established as a successful mitigation project. In this case, off-year monitoring should include some form of screening assessment such as driving by the mitigation site, telephone conversations regarding condition of the mitigation site, etc. On-site conditions, the complexity of the approved mitigation plan, and unforeseen circumstances will ultimately determine whether the monitoring period should be extended beyond the specified monitoring time frame for a particular project. Complex and/or ecologically significant compensatory mitigation projects should have higher priority for site visits.

As discussed above, the remaining monitoring requirements may be waived upon a determination that the compensatory mitigation project has achieved its performance standards. The original monitoring period may be extended upon a determination that

performance standards have not been met or the compensatory mitigation project is not on track to meet them (e.g., high mortality rate of vegetation). Monitoring requirements may also be revised in cases where adaptive management or remediation is required.

iii. Monitoring Reports. Monitoring requirements, including the frequency for providing monitoring reports to the District Commander and the Interagency Review Team (IRT), will be determined on a case-by-case basis and specified in either the DA permit, mitigation banking instrument, or approved mitigation plan. The content of the monitoring reports will be specified in the special conditions of the DA permit so that the requirements are clearly identified for the permittee or third-party mitigation sponsor. In addition, the monitoring reports should comply with the timeframes specified in the special conditions of the DA permit. Monitoring reports will not be used as a substitute for on site compliance inspections. The monitoring report will provide the PM with sufficient information on the compensatory mitigation project to assess whether it is meeting performance standards, and to determine whether a compliance visit is warranted. The party responsible for monitoring can electronically submit the monitoring reports and photos for review.

Visits to mitigation sites will be documented in the administrative record and will count toward District performance goals. An enforcement action may be taken if the responsible party fails to submit complete and timely monitoring reports.

b. Contents of Monitoring Reports. Monitoring reports provide the PM with a convenient mechanism for assessing the status of required compensatory mitigation projects. The PM should schedule a site visit and determine potential remedial actions if problems with the compensatory mitigation project are identified in a monitoring report.

The submittal of large bulky reports that provide mostly general information should be discouraged. While often helpful as background, reiteration of the mitigation and monitoring plan content, lengthy discussions of site progress, and extensive paraphrasing of quantified data are unnecessary. Monitoring reports should be concise and effectively provide the information necessary to assess the status of the compensatory mitigation project. Reports should provide information necessary to describe the site conditions and whether the compensatory mitigation project is meeting its performance standards.

Monitoring reports will include a Monitoring Report Narrative that provides an overview of site conditions and functions. This Monitoring Report Narrative should be concise and generally less than 10 pages, but may be longer for compensatory mitigation projects with complex monitoring requirements. Monitoring Report Narratives may be posted on each District's Regulatory web site.

Monitoring reports will also include appropriate supporting data to assist District Commanders and other reviewers in determining how the compensatory mitigation project is progressing towards meeting its performance standards. Such supporting data may include plans (such as as-built plans), maps, and photographs to illustrate site

conditions, as well as the results of functional, condition, or other assessments used to provide quantitative or qualitative measures of the functions provided by the compensatory mitigation project site.

c. Monitoring Report Narrative:

i. Project Overview (1 page)

(1) Corps Permit Number or Name of the Mitigation Bank or In-Lieu Fee Project
(2) Name of party responsible for conducting the monitoring and the date(s) the inspection was conducted.

(3) A brief paragraph describing the purpose of the approved project, acreage and type of aquatic resources impacted, and mitigation acreage and type of aquatic resources authorized to compensate for the aquatic impacts.

(4) Written description of the location, any identifiable landmarks of the compensatory mitigation project including information to locate the site perimeter(s), and coordinates of the mitigation site (expressed as latitude, longitudes, UTM's, state plane coordinate system, etc.).

(5) Dates the compensatory mitigation project commenced and/or was completed.

(6) Short statement on whether the performance standards are being met.

(7) Dates of any recent corrective or maintenance activities conducted since the previous report submission.

(8) Specific recommendations for any additional corrective or remedial actions.

ii. Requirements (1 page)

List the monitoring requirements and performance standards, as specified in the approved mitigation plan, mitigation banking instrument, or special conditions of the DA permit, and evaluate whether the compensatory mitigation project site is successfully achieving the approved performance standards or trending towards success. A table is a recommended option for comparing the performance standards to the conditions and status of the developing mitigation site.

iii. Summary Data (maximum of 4 pages)

Summary data should be provided to substantiate the success and/or potential challenges associated with the compensatory mitigation project. Photo documentation may be provided to support the findings and recommendations referenced in the monitoring report and to assist the PM in assessing whether the compensatory mitigation project is meeting applicable performance standards for that monitoring period. Submitted photos should be formatted to print on a standard 8 1/2" x 11" piece of paper, dated, and clearly labeled with the direction from which the photo was taken. The photo location points should also be identified on the appropriate maps.

iv. Maps and Plans (maximum of 3 pages)

Maps should be provided to show the location of the compensatory mitigation site relative to other landscape features, habitat types, locations of photographic reference points, transects, sampling data points, and/or other features pertinent to the mitigation plan. In addition, the submitted maps and plans should clearly delineate the mitigation site perimeter(s), which will assist PMs in locating the mitigation area(s) during subsequent site inspections. Each map or diagram should be formatted to print on a standard 8 ½" x 11" piece of paper and include a legend and the location of any photos submitted for review. As-built plans may be included.

v. Conclusions (1 page)

A general statement should be included that describes the conditions of the compensatory mitigation project. If performance standards are not being met, a brief explanation of the difficulties and potential remedial actions proposed by the permittee or sponsor, including a timetable, should be provided. The District Commander will ultimately determine if the mitigation site is successful for a given monitoring period.

d. Completion of Compensatory Mitigation Requirements. For permittee-responsible mitigation projects, compensatory mitigation requirements will not be considered fulfilled until the permittee has received written concurrence from the District Commander that the compensatory mitigation project has met its objectives and no additional monitoring reports are required. PMs will review the final monitoring reports to make this determination. A final field visit should be conducted to verify that on-site conditions are consistent with information documented in the monitoring reports.

e. Special Condition. The following condition should be added to all DA permits that require permittee-responsible mitigation. This condition does not apply to mitigation banks or in-lieu-fee programs:

Your responsibility to complete the required compensatory mitigation as set forth in Special Condition X will not be considered fulfilled until you have demonstrated compensatory mitigation project success and have received written verification of that success from the U.S. Army Corps of Engineers.

5. Duration

This guidance remains in effect unless revised or rescinded.



STEVEN L. STOCKTON, P.E.
Director of Civil Works

**EXHIBIT D
Carli Creek IGA**

Development Agency Considerations

Easement Type	Width	Length	Area	Market Value (PSF)	% of Market	Multiplier (2 years)	Value	Note:
Temporary Construction Easement (Upland)	35	1230	43060.5	\$7.00	8.50%	2	\$51,242.00	Actual TCE 50 ft, width is delta between TCE and Permanent
Permanent Pipe/Access (Upland)	15	1230	18454.5	\$7.00	100.00%	Permanent	\$129,181.50	Area along northern property line.
Temporary Construction Staging	366.45	300	109935	\$7.00	8.50%	2	\$130,822.65	
Permanent Pipe/Access (Lowland)			23730	\$0.23	100.00%	Permanent	\$5,457.90	Market Value: Per Carli Appraisal
Land Value (Mitigation Site)			61289	\$0.23	100.00%	Permanent	\$14,096.47	Market Value: Per Carli Appraisal
						Total Consideration	\$330,800.52	

CCSD No. 1 Considerations

Item	Cost
Engineering/Design (Herrera Contract)	\$ 65,400.00
Mitigation Construction	
Planting	\$ 24,000.00
Low Perm Soils (% of total based on wet)	\$ 18,837.00
Habitat Structures (1-Type1; 4-Type2; 7-Type3)	\$ 16,700.00
Option to Purchase with \$100,000 Purchase Credit	\$ 100,000.00
Temporary Easement Improvement	\$ 30,000.00
5 Year Mitigation Permit Management (\$15,000)	\$ 75,000.00
Total	\$ 329,937.00

**AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN WATER ENVIRONMENT SERVICES AND
CLACKAMAS COUNTY DEVELOPMENT AGENCY FOR
CARLI CREEK RESTORATION AND MITIGATION**

THIS AMENDMENT ("Amendment") is made and entered into by and between the Clackamas County Development Agency (hereafter called "Agency"), the urban renewal agency of Clackamas County, and Water Environment Services (hereafter called "District"), a municipal partnership entity formed pursuant to ORS Chapter 190, to update the descriptions of the easements associated with the stormwater pipeline and access road.

WHEREAS, the Agency and Clackamas County Service District No. 1 ("CCSD#1") entered into a certain Intergovernmental Agreement, effective July 27, 2017 (the "IGA");

WHEREAS, the IGA related to certain improvements associated with the Carli Creek Water Quality and Enhancement Project, as more particularly described in the IGA;

WHEREAS, after execution of the IGA, a question arose as to the location of the boundary line of the Agency's property, which required CCSD#1 to adjust the location of a stormwater pipeline to ensure that the improvement did not encroach on the neighboring property;

WHEREAS, the parties desire to revise the IGA to correctly reflect the location of the stormwater pipeline and access road easement; and

WHEREAS, on July 1, 2018, Clackamas County Service District No. 1 assigned all of its rights and obligations under the IGA to District.

THEREFORE, the parties agree that the Agreement is amended as follows:

1. Exhibit A of the Agreement is hereby amended and replaced in its entirety with a revised Exhibit A-1 and Exhibit A-2, which are attached to this Amendment and fully incorporated herein.
2. Except as set forth herein, the Agreement is ratified and affirmed in all respects. No other amendment or modification of the IGA is intended or may be implied from the amendments set forth herein.

3. All terms not specifically defined herein shall be defined as set forth in the IGA.

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

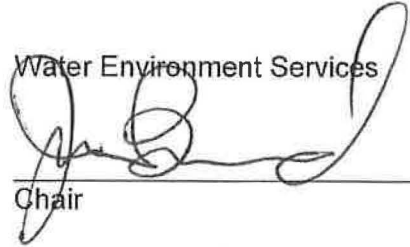
Clackamas County Development Agency



Chair

Mary Raethke
Recording Secretary

Water Environment Services

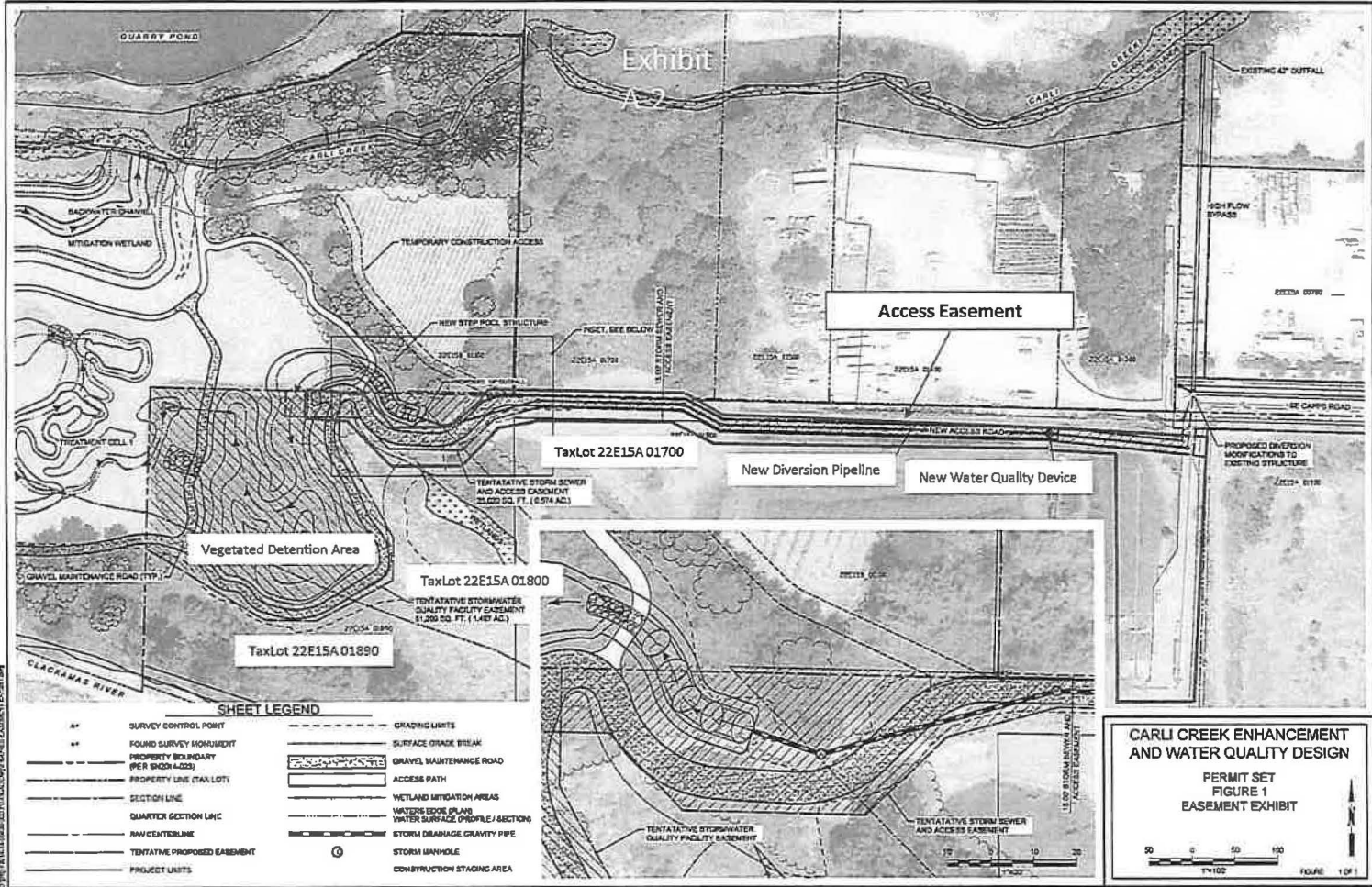


Chair

Exhibit List:

Exhibit A-1: Pipeline, Stormwater Detention, Maintenance, and Easement Map

Exhibit A-2: Access Easement Map



Permit No. 151-2018
 PROJECT: CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

Exhibit
A-2

Access Easement

TaxLot 22E15A 01700

New Diversion Pipeline

New Water Quality Device

Vegetated Detention Area

TaxLot 22E15A 01800

TaxLot 22E15A 01890

SHEET LEGEND

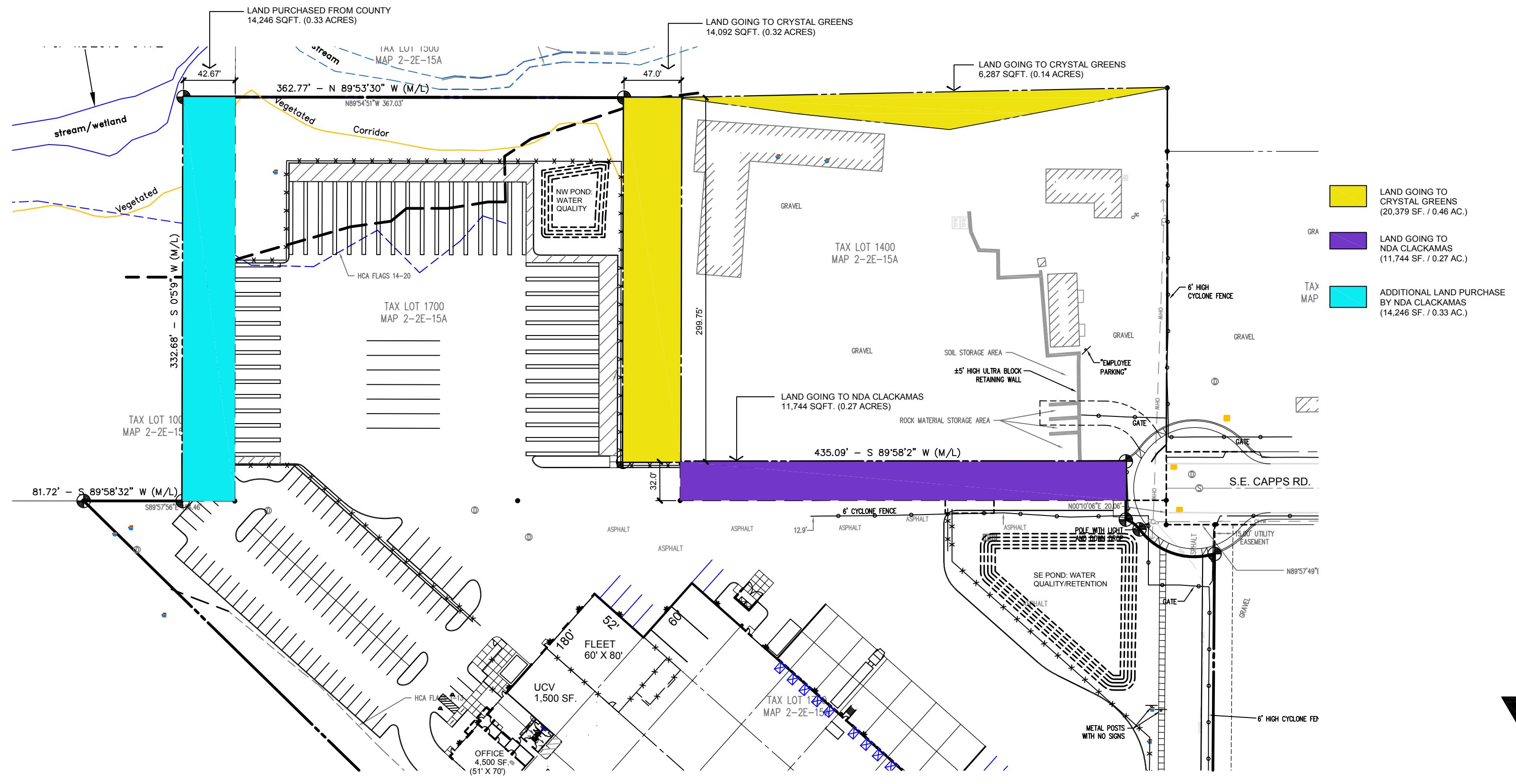
••	SURVEY CONTROL POINT	---	GRADING LIMITS
••	FOUND SURVEY MONUMENT	---	SURFACE GRADE BREAK
---	PROPERTY BOUNDARY (PER 84009 A.023)	---	GRAVEL MAINTENANCE ROAD
---	PROPERTY LINE (TAX LOT)	---	ACCESS PATH
---	SECTION LINE	---	WETLAND MITIGATION AREAS
---	QUARTER SECTION LINE	---	WATERS EDGE OR PLAN WATER SURFACE PROFILE / SECTION
---	RAV CENTERLINE	---	STORM DRAINAGE GRAVITY PIPE
---	TENTATIVE PROPOSED EASEMENT	---	STORM MANHOLE
---	PROJECT LIMITS	---	CONSTRUCTION STAGING AREA

CARLI CREEK ENHANCEMENT AND WATER QUALITY DESIGN

PERMIT SET
FIGURE 1
EASEMENT EXHIBIT

50 0 50 100
1"=100' FIGURE 1 OF 1

EXHIBIT B





Gregory L. Geist
Director

Board of County Commissioners
Clackamas County

Members of the Board:

Approval of a Professional Services Contract
between Water Environment Services and Otak, Inc. for the
Water Environment Services & Happy Valley Storm System Master Plan

Purpose/Outcomes	Execution of the contract between Water Environment Services and Otak, Inc. for the Water Environment Services & Happy Valley Storm System Master Plan.
Dollar Amount and Fiscal Impact	The contract amount is not to exceed \$476,999.00.
Funding Source	WES Surface Water Operating Funds
Duration	Contract execution through January 31, 2021
Previous Board Action	N/A
Strategic Plan Assignment	This project aligns with the County's strategic goals of building strong infrastructure and also honoring, utilizing, promoting, and investing in the county's natural resources. This project also supports WES's resiliency and infrastructure performance goals in two ways: <ul style="list-style-type: none"> • 30% of streams within WES' jurisdiction meet or exceed water quality standards • Initiative: By December 31, 2020, Clackamas County will adopt a Master Plan for surface water management that will enhance the quality of surface water.
Contact Person	Leah Johanson, Civil Engineer, 503-742-4620 Ron Wierenga, Environmental Services Manager 503-742-4581

BACKGROUND:

Clackamas County Water Environment Services ("WES") is preparing a Storm System Master Plan on behalf of WES, Clackamas County, and the City of Happy Valley. The plan will support WES's infrastructure planning, maintenance, and construction projects. The plan also supports Happy Valley's ongoing comprehensive land use planning for the Pleasant Valley/North Carver area.

The Consultant will write the plan under the direction of the WES Project Manager. The Plan will include a list of capital improvement projects and priorities, system management and maintenance recommendations, programmatic recommendations, summary fact sheets and maps, and recommendations for funding needs and strategies.

The objectives for this Storm System Plan are:

- Establish a foundation for evaluating storm system needs in WES's service area including unincorporated Clackamas County and the City of Happy Valley.
- Identify existing system deficiencies and provide conceptual solutions including maintenance recommendations or new/retrofitted/repared conveyance, treatment, and detention facilities.

- Identify areas for expansion and extension of the storm system to serve future growth, as well as under-served areas within the urbanized area.
- Prepare a list of capital improvement projects including new/retrofitted/repaired storm system projects.
- Establish baseline cost estimates for priority storm system improvements that will be used for planning in the Capital Improvement Program and for budgeting and creation of a 5-year construction plan.

PROCUREMENT PROCESS:

This project was advertised in accordance with ORS and LCRB Rules on November 13, 2018. Proposals were opened on January 10, 2019. The County received four (4) Proposals: Brown and Caldwell, Cardno, Herrera Environmental Consultants, and Otak, Inc. Upon evaluation of the submitted proposals, the Evaluation Committee scored Otak, Inc. the highest and recommend a contract be awarded. Following award, the Project Manager entered into negotiations with Otak, Inc. and developed a final statement of work along with final billing rates and a contract total value.

The contract was reviewed and approved by County Counsel.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners of Clackamas County, acting as the governing body of Water Environment Services, approve and execute the Contract between Water Environment Services and Otak, Inc. for the Water Environment Services & Happy Valley Storm System Master Plan

Respectfully submitted,

Greg Geist, Director
Water Environment Services

Placed on the _____ agenda by Procurement.



PERSONAL/PROFESSIONAL SERVICES CONTRACT

This Personal/Professional Services Contract (this “Contract”) is entered into between **Otak, Inc.** (“Contractor”), and Water Environment Services, a political subdivision of the State of Oregon (“District”).

ARTICLE I.

1. Effective Date and Duration. This Contract shall become effective upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **January 31, 2021**. However, such expiration shall not extinguish or prejudice the District’s right to enforce this Contract with respect to: (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor performance that has not been cured.

2. Scope of Work. Contractor will provide the following personal/professional services: **#2018-115 Water Environment Services & Happy Valley Storm System Master Plan** (“Work”), further described in **Exhibit A**.

3. Consideration. The District agrees to pay Contractor, from available and authorized funds, a sum not to exceed **four hundred seventy-six thousand nine hundred ninety-nine dollars (\$476,999.00)**, for accomplishing the Work required by this Contract. Consideration rates are on a time and material basis in accordance with the costs and rates specified in Exhibit F. If any interim payments to Contractor are made, such payments shall be made only in accordance with the schedule and requirements in Exhibit A.

4. Travel and Other Expense. Authorized: Yes No
If travel expense reimbursement is authorized in this Contract, such expense shall only be reimbursed at the rates in the Clackamas County Contractor Travel Reimbursement Policy, hereby incorporated by reference and found at: <http://www.clackamas.us/bids/terms.html>. Travel expense reimbursement is not in excess of the not to exceed consideration.

5. Contract Documents. This Contract consists of the following documents which are listed in descending order of precedence and are attached and incorporated by reference, this Contract, Exhibits A, B, C, D, E, and F.

6. Contractor Data.

Otak, Inc.

Address: 808 SW Third Avenue, Suite 300
Portland, Oregon 97204

Contractor Contract Administrator: Kevin Timmins, PE

Phone No.: 503-415-2340

Email: kevin.timmins@otak.com

MWESB Certification: DBE # MBE # WBE # ESB #

Payment information will be reported to the Internal Revenue Service (“IRS”) under the name and taxpayer ID number submitted. (See I.R.S. 1099 for additional instructions regarding taxpayer ID numbers.) Information not matching IRS records could subject Contractor to backup withholding.

ARTICLE II.

1. **ACCESS TO RECORDS.** Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and anticipated to be incurred in the performance of this Contract. District and their duly authorized representatives shall have access to the books, documents, papers, and records of Contractor which are directly pertinent to this Contract for the purpose of making audit, examination, excerpts, and transcripts. Such books and records shall be maintained by Contractor for a minimum of three (3) years, or such longer period as may be required by applicable law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
2. **AVAILABILITY OF FUNDS.** District certifies that sufficient funds are available and authorized for expenditure to finance costs of this Contract within its current annual appropriation or expenditure limitation, provided, however, that continuation of this Contract, or any extension, after the end of the fiscal period in which it is written, is contingent on a new appropriation or limitation for each succeeding fiscal period sufficient in amount, in the exercise of the District's reasonable administrative discretion, to continue to make payments under this Contract.
3. **CAPTIONS.** The captions or headings in this Contract are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Contract.
4. **COMPLIANCE WITH APPLICABLE LAW.** Contractor shall comply with all federal, state, county, and local laws, ordinances, and regulations applicable to the Work to be done under this Contract. Contractor specifically agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor shall also comply with the Americans with Disabilities Act of 1990 (Pub. L. No. 101-336), Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws. Contractor further agrees to make payments promptly when due, to all persons supplying to such Contractor, labor or materials for the prosecution of the Work provided in this Contract; pay all contributions or amounts due the Industrial Accident Funds from such Contractor responsibilities incurred in the performance of this Contract; not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished; pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If Contractor fails or refuses to make any such payments required herein, the appropriate District official may pay such claim. Any payment of a claim in the manner authorized in this section shall not relieve the Contractor or Contractor's surety from obligation with respect to unpaid claims. Contractor shall promptly pay any person or entity that furnishes medical care to Contractor's employees those sums which Contractor agreed to pay for such services and all money Contractor collected or deducted from employee's wages to provide such services.
5. **EXECUTION AND COUNTERPARTS.** This Contract may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.
6. **GOVERNING LAW.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, or suit between District and Contractor that arises out of or relates to the performance of this Contract shall be brought and conducted solely and exclusively within the Circuit Court for Clackamas County, for the State of Oregon. Provided, however, that if any such claim, action, or suit may be brought in a federal forum, it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

- 7. HAZARD COMMUNICATION.** Contractor shall notify District prior to using products containing hazardous chemicals to which District employees may be exposed. Products containing hazardous chemicals are those products defined by Oregon Administrative Rules, Chapter 437. Upon District's request, Contractor shall immediately provide Material Safety Data Sheets for the products subject to this provision.
- 8. INDEMNITY, RESPONSIBILITY FOR DAMAGES.** Contractor shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay which may be caused by, or result from, the conduct of Work, or from any act, omission, or neglect of Contractor, its subcontractors, agents, or employees. The Contractor agrees to indemnify, hold harmless and defend the District and Clackamas County, and their officers, elected officials, agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Contractor or the Contractor's employees, subcontractors, or agents.
- 9. INDEPENDENT CONTRACTOR STATUS.** The service(s) to be rendered under this Contract are those of an independent contractor. Although the District reserves the right to determine (and modify) the delivery schedule for the Work to be performed and to evaluate the quality of the completed performance, District cannot and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not to be considered an agent or employee of District for any purpose, including, but not limited to: (A) The Contractor will be solely responsible for payment of any Federal or State taxes required as a result of this Contract; (B) This Contract is not intended to entitle the Contractor to any benefits generally granted to District employees, including, but not limited to, vacation, holiday and sick leave, other leaves with pay, tenure, medical and dental coverage, life and disability insurance, overtime, Social Security, Workers' Compensation, unemployment compensation, or retirement benefits; and (C) If the Contractor has the assistance of other persons in the performance of this Contract, and the Contractor is a subject employer, the Contractor shall qualify and remain qualified for the term of this Contract as an insured employer under ORS Chapter 656. (Also see Exhibit C)
- 10. INSURANCE.** Contractor shall provide insurance as indicated on **Exhibit B**, attached hereto and by this reference made a part hereof. Insurance policies, which cannot be excess to a self-insurance program, are to be issued by an insurance company authorized to do business in the State of Oregon.
- 11. LIMITATION OF LIABILITIES.** Except for liability arising under or related to Section 14 or 21(B), neither party shall be liable for (i) any indirect, incidental, consequential or special damages under this Contract or (ii) any damages of any sort arising solely from the termination of this Contract in accordance with its terms. This Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.
- 12. NOTICES.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing by personal delivery, email, or mailing the same, postage prepaid, to the District at: Clackamas County Procurement, 2051 Kaen Road, Oregon City, OR 97045, or procurement@clackamas.us, or to Contractor at the address or number set forth in Section 1 of this Contract, or to such other addresses or numbers as either party may hereafter indicate. Any communication or notice so addressed and mailed shall be deemed to be given five (5) days after mailing. Any

communication or notice by personal delivery shall be deemed to be given when actually delivered.

- 13. OWNERSHIP OF WORK PRODUCT.** All work product of Contractor that results from this Contract (the “Work Product”) is the exclusive property of District. District and Contractor intend that such Work Product be deemed “work made for hire” of which District shall be deemed the author. If for any reason the Work Product is not deemed “work made for hire,” Contractor hereby irrevocably assigns to District all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark or trade secret, or any other state or federal intellectual property law or doctrine. Contractor shall execute such further documents and instruments as District may reasonably request in order to fully vest such rights in District. Contractor forever waives any and all rights relating to the Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- 14. REPRESENTATIONS AND WARRANTIES.** Contractor represents and warrants to District that (A) Contractor has the power and authority to enter into and perform this Contract; (B) this Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; (C) the Work under this Contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and (D) Contractor shall at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work. The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided.
- 15. SURVIVAL.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Article II, Paragraphs 1, 6, 8, 11, 13, 14, 15, and 21.
- 16. SEVERABILITY.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- 17. SUBCONTRACTS AND ASSIGNMENTS.** Contractor shall not enter into any subcontracts for any of the Work required by this Contract, or assign or transfer any of its interest in this Contract by operation of law or otherwise, without obtaining prior written approval from the District. In addition to any provisions the District may require, Contractor shall include in any permitted subcontract under this Contract a requirement that the subcontractor be bound by this Article II, Paragraphs 1, 8, 13, 15, and 27 as if the subcontractor were the Contractor. District’s consent to any subcontract shall not relieve Contractor of any of its duties or obligations under this Contract.
- 18. SUCCESSORS IN INTEREST.** The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective authorized successors and assigns.
- 19. TAX COMPLIANCE CERTIFICATION.** Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. Any violation of this section shall constitute a material breach of this Contract. Further, any violation of Contractor’s warranty in this Contract that Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle District to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this

Contract, at law, or in equity, including but not limited to: (A) Termination of this Contract, in whole or in part; (B) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to District's setoff right, without penalty; and (C) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. District shall be entitled to recover any and all damages suffered as the result of Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement performance. These remedies are cumulative to the extent the remedies are not inconsistent, and District may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

The Contractor represents and warrants that, for a period of no fewer than six calendar years preceding the effective date of this Contract, Contractor has faithfully complied with: (A) All tax laws of this state, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318; (B) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any Work performed by Contractor; (C) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (D) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

20. TERMINATIONS. This Contract may be terminated for the following reasons: (A) This Contract may be terminated at any time by mutual consent of the parties, or by the District for convenience upon thirty (30) days' written notice to the Contractor; (B) District may terminate this Contract effective upon delivery of notice to Contractor, or at such later date as may be established by the District, if (i) federal or state laws, rules, regulations, or guidelines are modified, changed, or interpreted in such a way that either the Work under this Contract is prohibited or the District is prohibited from paying for such Work from the planned funding source; or (ii) any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, or not renewed; (C) This Contract may also be immediately terminated by the District for default (including breach of Contract) if (i) Contractor fails to provide services or materials called for by this Contract within the time specified herein or any extension thereof; or (ii) Contractor fails to perform any of the other provisions of this Contract or so fails to pursue the Work as to endanger performance of this Contract in accordance with its terms, and after receipt of notice from the District, fails to correct such failure within ten (10) business days; or (D) If sufficient funds are not provided in future approved budgets of the District (or from applicable federal, state, or other sources) to permit the District in the exercise of its reasonable administrative discretion to continue this Contract, or if the program for which this Contract was executed is abolished, District may terminate this Contract without further liability by giving Contractor not less than thirty (30) days' notice.

21. REMEDIES. (A) In the event of termination pursuant to Article II Section 20(A), (B)(i), or (D), Contractor's sole remedy shall be a claim for the sum designated for accomplishing the Work multiplied by the percentage of Work completed and accepted by the District, less previous amounts paid and any claim(s) which the District has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under Section 21(A), Contractor shall pay any excess to District on demand. (B) In the event of termination pursuant to Sections 20(B)(ii) or 20(C), the District shall have any remedy available to it in law or equity. If it is determined for any reason that Contractor was not in default under Sections 20(B)(ii) or 20(C), the rights and obligations of the parties shall be the same as if the Contract was terminated pursuant to Section 20(A). (C) Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract, unless District expressly directs

otherwise in such notice of termination. Upon termination of this Contract, Contractor shall deliver to District all documents, information, works-in-progress and other property that are or would be deliverables had the Contract Work been completed. Upon District's request, Contractor shall surrender to anyone District designates, all documents, research, objects or other tangible things needed to complete the Work.

- 22. NO THIRD PARTY BENEFICIARIES.** District and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.
- 23. TIME IS OF THE ESSENCE.** Contractor agrees that time is of the essence in the performance this Contract.
- 24. FOREIGN CONTRACTOR.** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State, Corporate Division, all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this Contract.
- 25. FORCE MAJEURE.** Neither District nor Contractor shall be held responsible for delay or default caused by fire, terrorism, riot, acts of God, or war where such cause was beyond, respectively, District's or Contractor's reasonable control. Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.
- 26. WAIVER.** The failure of District to enforce any provision of this Contract shall not constitute a waiver by District of that or any other provision.
- 27. COMPLIANCE.** Pursuant to the requirements of ORS 279B.020 and 279B.220 through 279B.235 and Article XI, Section 10, of the Oregon Constitution, the following terms and conditions are made a part of this Contract:
- (A) Contractor shall: (i) Make payments promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work provided for in this Contract; (ii) Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of this Contract; (iii) Not permit any lien or claim to be filed or prosecuted against the District on account of any labor or material furnished.
- (B) If the Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a subcontractor by any person in connection with this Contract as such claim becomes due, the proper officer representing the District may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to the Contractor by reason of this Contract.
- (C) The Contractor shall pay employees for Work in accordance with ORS 279B.020 and ORS 279B.235, which is incorporated herein by this reference. All subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.
- (D) The Contractor shall promptly, as due, make payment to any person or co-partnership, association or corporation furnishing medical, surgical and hospital care, or other needed care and attention incident to sickness and injury to the employees of the Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of the Contractor's employees pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

28. KEY PERSONS. Contractor acknowledges and agrees that a significant reason the District is entering into this Contract is because of the special qualifications of certain Key Persons set forth in the contract. Under this Contract, the District is engaging the expertise, experience, judgment, and personal attention of such Key Persons. Neither Contractor nor any of the Key Persons shall delegate performance of the management powers and responsibilities each such Key Person is required to provide under this Contract to any other employee or agent of the Contractor unless the District provides prior written consent to such delegation. Contractor shall not reassign or transfer a Key Person to other duties or positions such that the Key Person is no longer available to provide the District with such Key Person's services unless the District provides prior written consent to such reassignment or transfer.

29. MERGER. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER REFERENCED THEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE HERETO OF ITS AUTHORIZED REPRESENTATIVE, IS AN INDEPENDENT CONTRACTOR, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS CONTRACT, AND CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

By their signatures below, the parties to this Contract agree to the terms, conditions, and content expressed herein.

Otak, Inc.

Water Environment Services

Authorized Signature Date

Chair Date

Name / Title (Printed)

Recording Secretary

Oregon Business Registry #

Approved as to Form:

Entity Type / State of Formation

County Counsel Date

EXHIBIT A
PERSONAL/PROFESSIONAL SERVICES CONTRACT

SCOPE OF WORK

Contractor shall provide master plan services for Water Environment Services and Happy Valley as outlined in the Request for Proposal #2018-115 issued November 13, 2018, hereby attached as incorporated as **Exhibit D**; the Vendors Response and final negotiated work hereby attached and incorporated as **Exhibit E**; and the Rate Schedule hereby attached and incorporated as **Exhibit F**.

The District Contract administrator for this Contract is: Leah Johanson.

CONSIDERATION

- a. Payment for all Work performed under this Contract shall be subject to the provisions of ORS 293.462. Invoices shall be submitted to: Water Environment Services, 150 Beaver Creek Road, Oregon City, Oregon 97045 or via email at ljohanson@clackamas.us.
- b. Unless otherwise specified, Contractor shall submit monthly invoices for Work performed. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor. Payments shall be made to Contractor following the District's review and approval of invoices submitted by Contractor. Contractor shall not submit invoices for, and the District will not pay, any amount in excess of the maximum compensation amount set forth above. If this maximum compensation amount is increased by amendment of this Contract, the amendment must be fully effective before Contractor performs Work subject to the amendment. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.
- c. Invoices shall describe all Work performed with particularity, by whom it was performed, and shall itemize and explain all expenses for which reimbursement is claimed. The billings shall also include the total amount billed to date by Contractor prior to the current invoice.

**EXHIBIT B
INSURANCE**

During the term of this Contract, Contractor shall maintain in full force at its own expense, each insurance noted below:

1. Required by District of Contractor with one or more workers, as defined by ORS 656.027.

Contractor, its subcontractors, if any, and all employers providing work, labor, or materials under this Contract are subject employers under the Oregon Workers' Compensation Law, and shall either comply with ORS 656.017, which requires said employers to provide workers' compensation coverage that satisfies Oregon law for all their subject workers, or shall comply with the exemption set out in ORS 656.126.

2. Required by District Not required by District

Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000. This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Contract. The policy must provide extending reporting period coverage for claims made within two years after the contract is completed.

3. Required by District Not required by District

General Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each claim, incident, or occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this Contract.

4. Required by District Not required by District

Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 for each accident for Bodily Injury and Property Damage, including coverage for owned, hired, or non-owned vehicles, as applicable.

5. Certificates of Insurance. Contractor shall furnish evidence of the insurance required in this Contract. The insurance for general liability and automobile liability must include an endorsement naming the District and Clackamas County, its officers, elected officials, agents, and employees as additional insureds with respect to the Work under this Contract. Insuring companies or entities are subject to District acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the District. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

6. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the District at the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or procurement@clackamas.us.

EXHIBIT C
CERTIFICATION STATEMENT FOR INDEPENDENT CONTRACTOR

(Contractor completes if Contractor is not a corporation or is a Professional Corporation)

Contractor certifies he/she is independent as defined in Oregon Revised Statutes 670.600 and meets the following standards that the Contractor is:

1. Free from direction and control, beyond the right of the District to specify the desired result; **AND**
2. Are licensed if licensure is required for the services; **AND**
3. Are responsible for other licenses or certificates necessary to provide the services **AND**
4. Are customarily engaged in an “independently established business.”

To qualify under the law, an “independently established business” must meet three (3) out of the following five (5) criteria. **Check as applicable:**

- _____ A. Maintains a business location that is: (a) Separate from the business or work of the District; or (b) that is in a portion of their own residence that is used primarily for business.
- _____ B. Bears the risk of loss, shown by factors such as: (a) Entering into fixed price contracts; (b) Being required to correct defective work; (c) Warranting the services provided; or (d) Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
- _____ C. Provides contracted services for two or more different persons within a 12-month period, or routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
- _____ D. Makes significant investment in the business through means such as: (a) Purchasing tools or equipment necessary to provide the services; (b) Paying for the premises or facilities where the services are provided; or (c) Paying for licenses, certificates or specialized training required to provide the services.
- _____ E. Has the authority to hire and fire other persons to provide assistance in performing the services.

Additional provisions:

1. A person who files tax returns with a Schedule F and also performs agricultural services reportable on a Schedule C is not required to meet the independently established business requirements.
2. Establishing a business entity such as a corporation or limited liability company, does not, by itself, establish that the individual providing services will be considered an independent contractor.

Contractor Signature _____ Date _____

EXHIBIT D
RFP #2018-115
WATER ENVIRONMENT SERVICES &
HAPPY VALLEY STORM SYSTEM MASTER PLAN
Issued November 13, 2018

EXHIBIT E
VENDOR RESPONSE AND NEGOTIATED SCOPE

NEGOTIATED SCOPE

**EXHIBIT F
FEE SCHEDULE**