



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

MAEVE VALLELY BARTLETT
Secretary

SEP 19 2014

DAVID W. CASH
Commissioner



Mass Department of Transportation, Highway Division
C/o BSC Group, Inc.
15 Elkins Street
Boston, MA 02127
Attn: Jeffrey T. Malloy

RE: Written Determination pursuant to M.G.L. c.91 Waterways Application No. W14-4056-N
Stormwater BMPs (constructed wetlands), I-195 at Exits 16 & 17, Between Washburn and Coggeshall Streets
Filled tidelands of the Acushnet River, New Bedford, Bristol County

Dear Mr. Malloy:

The Department hereby issues this Written Determination, pursuant to MGL Chapter 91, the Public Waterfront Act, and 310 CMR 9.00, the Waterways Regulations, of its intent to approve the referenced application, subject to the attached conditions.

The proponent seeks to construct and maintain three (3) stormwater wetlands for the purpose of treating stormwater runoff from roadways associated with Coggeshall Street, Route I - 195 and Washburn Street, in New Bedford, Massachusetts. The area is located entirely on filled Commonwealth Tidelands associated with the Acushnet River.

FINDINGS:

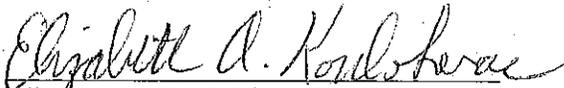
- 1) The Department determines, based on the project facts, that the use of filled Public Tidelands for the treatment of stormwater runoff is a nonwater-dependent use pursuant to 310 CMR 9.12(2)(d), and therefore is being reviewed as a Nonwater-dependent Infrastructure Facility in accordance with 310 CMR 9.02 and 9.55.
- 2) The Department determines that the Project Site (defined at 310 CMR 9.02) identified as State Highway Layout at Route I - 195, Exits 16 & 17 between Washburn and Coggeshall Streets in New Bedford, Massachusetts, is an area of approximately 5.8 acres within the geographic area subject to MGL Chapter 91 jurisdiction pursuant to 310 CMR 9.04(2). Approximately 0.93 acres of the Project site, which is entirely filled Commonwealth Tidelands, will be altered to construct the stormwater wetlands. The total project area is 13.6 acres, including the 5.8 acres of Project Site (jurisdictional).
- 3) The Department determines that the Applicant published the notice in the "Environmental Monitor" on April 9, 2014 and the New Bedford Standard Times on March 31, 2014. The associated public hearing was held at the New Bedford City Hall on April 17, 2014. There were no written comments during the public comment period.

- 4) The Applicant has submitted relevant documentation regarding compliance with other regulatory requirements including the Massachusetts Environmental Policy Act (EOEA #15147 Certificate stating that no EIR was required, issued February 21, 2014), the Wetlands Protection Act (Order of Conditions SE 19 - 0697, issued October 21, 2013), and local zoning (certification, dated April 17, 2014).
- 5) Since no EIR was required a section 61 finding is not required pursuant to MGL Chapter 30 section 61.
- 6) The Department determines that the project, as conditioned, complies with all applicable standards of the Waterways Regulations, including the special standards for Nonwater-dependent use projects at 310 CMR 9.55, Nonwater-dependent Infrastructure Facilities, and therefore the standards at 310 CMR 9.51-9.53 shall not apply. Specifically, the project meets 310 CMR 9.55 (1), (b), (c) & (d), in that it seeks to enhance the living marine resources, to reach generally accepted water quality goals, and to reduce flood and erosion-related hazards on lands subject to the 100-year storm event (especially in damage-prone or natural buffer areas). This project is part of the Impaired Waters/Stormwater Retrofit Program, which applies to all projects where MassDOT roadways discharge to an impaired waterbody or watershed. The Acushnet River within this location is listed as an impaired waterway (Waterbody ID MA 95-33) for water quality impairments for taste, color, odor, trash, oxygen depletion, pathogens, nutrients, oil and grease, and Polychlorinated biphenyls (PCB's). This project will result in an overall improvement to the water quality entering the Acushnet River (80 % TSS removal and up to a 75 % reduction in total pathogens), will involve the removal of invasive species (*Phragmites australis*) within the project area, and will create an additional 66,000 cubic feet (2,444 cubic yards) of flood storage within the 100-year floodplain. Just south of the area, the Acushnet River expands to become the New Bedford Inner Harbor (Waterbody ID MA 95-42), which will receive similar water quality benefits as a result of this project.
- 7) The Department determines that the project as conditioned serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands in accordance with 310 CMR 9.31(2)(b).
- 8) The Department determines that the proposed project is consistent with all applicable CZM policies, in accordance with M.G.L. c.91 § 18 since no comment was received from the Massachusetts Office of Coastal Zone Management (CZM).
- 9) The License to be issued pursuant hereto shall be valid for an unlimited term in accordance with 310 CMR 9.15(1)(c).

On the basis of the foregoing analysis, the Department will approve the proposed structures and uses described herein, as shown on the draft license plan and as shall be modified and delineated on the final license plans in accordance with the terms of this Determination. This Determination is subject to the attached special conditions to be carried out by the referenced Applicant (hereinafter the "Licensee"). These special conditions will be included, in substantially the same form, along with the standard conditions, with the final Chapter 91 Waterways license to be issued pursuant hereto. This Determination, including the attached Special Conditions, is subject to appeal as described in more detail in the Notice of Appeal Rights section. The Department will grant the Waterways license if no appeals are filed within 21 days of the issuance of this Written Determination and upon receipt of the final mylar plans.

If you have any further questions, please contact Carlos T. B. Fragata at (508) 946 - 2873 of the Waterways Regulation Program.

THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION ON THE 19th DAY OF SEPTEMBER 2014.



Elizabeth A. Kouloheras, Chief
Wetlands and Waterways Program

- Cc: New Bedford Conservation Commission and Environmental Stewardship
C/o Sarah Porter, Conservation Agent
New Bedford Planning Department C/o Jill Maclean, City Planner
New Bedford Harbor Master, C/o Larry Chongarlides, Harbormaster
New Bedford Harbor Development Commission, C/o Jeffrey Stieb, Port Director & HDC Executive Director
MassDOT - Highway Division C/o Susan McArthur, Wetlands Supervisor
- Ecc: EOEa, MEPA (EOEA #15147), Attn: Holly Johnson
DEP Boston – DWW, Attn: Ben Lynch, Chief, Waterways Regulation Program
CZM, Bob Boeri, Project Review Coordinator
WRP Files

Notice of Appeal Rights:

Who has the right to appeal?

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit, in accordance with 310 CMR 9.17(1): (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth who, pursuant to M.G.L. c. 30A, § 10A, have submitted comments within the public comment period with at least 5 of the 10 residents residing in the municipality(s) in which the license or permitted activity is located. The appeal shall clearly and specifically state the facts and grounds for the appeal and the relief sought, and each appealing resident shall file an affidavit stating the intent to be part of the group and to be represented by its authorized representative; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; and (e) CZM, for any project identified in 310 CMR 9.13(2) (a) for CZM participation or, in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

How can I request an adjudicatory hearing?

A person requesting an adjudicatory hearing must submit a "Notice of Claim" to the Department, with a copy of the MassDEP Transmittal Form and including the detail specified below, within twenty-one (21) days of the date of issuance of this decision. The MassDEP Fee Transmittal Form is available at the following website: <http://www.mass.gov/eea/docs/dep/service/adr/adjherfm.doc>. The Notice of Claim must be made in writing and sent by certified mail or hand delivery to:

Case Administrator
MassDEP
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the complete Notice of Claim must be sent at the same time by certified mail or hand delivery to: (1) the applicant, (2) the municipal official of the city or town where the project is located, and (3) the issuing office of the MassDEP, which in this case is located at:

MassDEP
Waterways Regulation Program
20 Riverside Drive
Lakeville, MA 02347

The MassDEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Mass. Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

What information must be included in the hearing request?

Pursuant to 310 CMR 9.17(3), any Notice of Claim requesting an adjudicatory hearing must include the following information:

- (a) the MassDEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;

- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of “aggrieved person” found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP’s written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Dismissal of request

The request for appeal will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

WRITTEN DETERMINATION AND CONDITIONS

Massachusetts Department of Transportation, Highway Division

of -- Boston --, in the County of -- Suffolk -- and Commonwealth aforesaid -- has applied to the Department of Environmental Protection to -- construct and maintain three (3) stormwater (constructed wetland) BMPs -----

and has submitted plans of the same; and whereas due notice of said application, and of the time and place fixed for a hearing thereon, has been given, as required by law, to the -- Mayor and City Council -- of the - City -- of -- New Bedford -----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said -----

Massachusetts Department of Transportation, Highway Division --, subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to -- construct and maintain three (3) stormwater (constructed wetland) BMPs -----

in and over filled tidelands of -- The Acushnet River -- At Exits 16 & 17 off of I – 195, between Washburn and Coggeshall Streets in the -- City -- of -- New Bedford -- and in accordance with the locations shown and details indicated on the accompanying *DRAFT* DEP License Plan No. W14-4056N, (11 Sheets).

The structures authorized hereby shall be limited to the following uses: conveyance of stormwater.

The term for this license is unlimited in accordance with 310 CMR 9.15(1)(c).

The Written Determination issued hereto, shall remain valid for up to one year after issuance. Said term may be extended for one or more one year periods, provided that the Licensee submit to the Department, thirty (30) days prior to the expiration of said term a written request to extend the term and provides adequate justification for said extension. This condition shall expire upon issuance of a License pursuant hereto.

SPECIAL WATERWAYS CONDITIONS:

1. The existing pile supported pier on the property, shown on the License Plan No. DRAFT as "Existing Dock (Unauthorized Structure)" is not authorized herein.
2. All work authorized herein shall be completed within five (5) years of the date of license issuance. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant submits to the Department, thirty (30) days prior to the expiration of said construction period, a written request to extend the period and provides an adequate justification for said extension.
3. Within sixty (60) days of completion of the licensed project, the Licensee shall request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed in the Commonwealth that the project was completed in accordance with the License.

Please see the following Standard Waterways License Conditions.-----

Duplicate of said plan, number *DRAFT* DEP License Plan No. W14 - 4056 N is on file in the office of said Department, and original of said plan accompanies this License to be issued pursuant hereto, and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
 2. The License to be issued pursuant hereto is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to the License to be issued pursuant hereto.
 3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
 4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. The License to be issued pursuant hereto may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
 5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
 6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
 7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
 8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP.
 9. The License to be issued pursuant hereto authorizes structure(s) and/or fill on:
 - Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the Licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.
 - Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.
 - a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose
 - Navigable River or Stream. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, in the waterway.
- No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in the License to be issued pursuant hereto.
10. Unless otherwise expressly provided by the License to be issued pursuant hereto, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said -- Massachusetts Department of Transportation, Highway Division -- by paying into the treasury of the Commonwealth -- zero dollars and zero cents (\$ 0.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department (0 cu. Yd. = \$ 0.00).

Nothing in the License to be issued pursuant hereto shall be so construed as to impair the legal rights of any person.

The License to be issued pursuant hereto shall be void unless the same and the accompanying plan are recorded within sixty (60) days from the date hereof, in the Bristol County Registry of Deeds.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this day of _____ in the year two thousand and 2014.

Commissioner _____

Program Director _____

Program Chief _____

**Department of
Environmental
Protection**

THE COMMONWEALTH OF MASSACHUSETTS

The License to be issued pursuant hereto is approved in consideration of the payment into the treasury of the Commonwealth by the said -- Massachusetts Department of Transportation, Highway Division -----

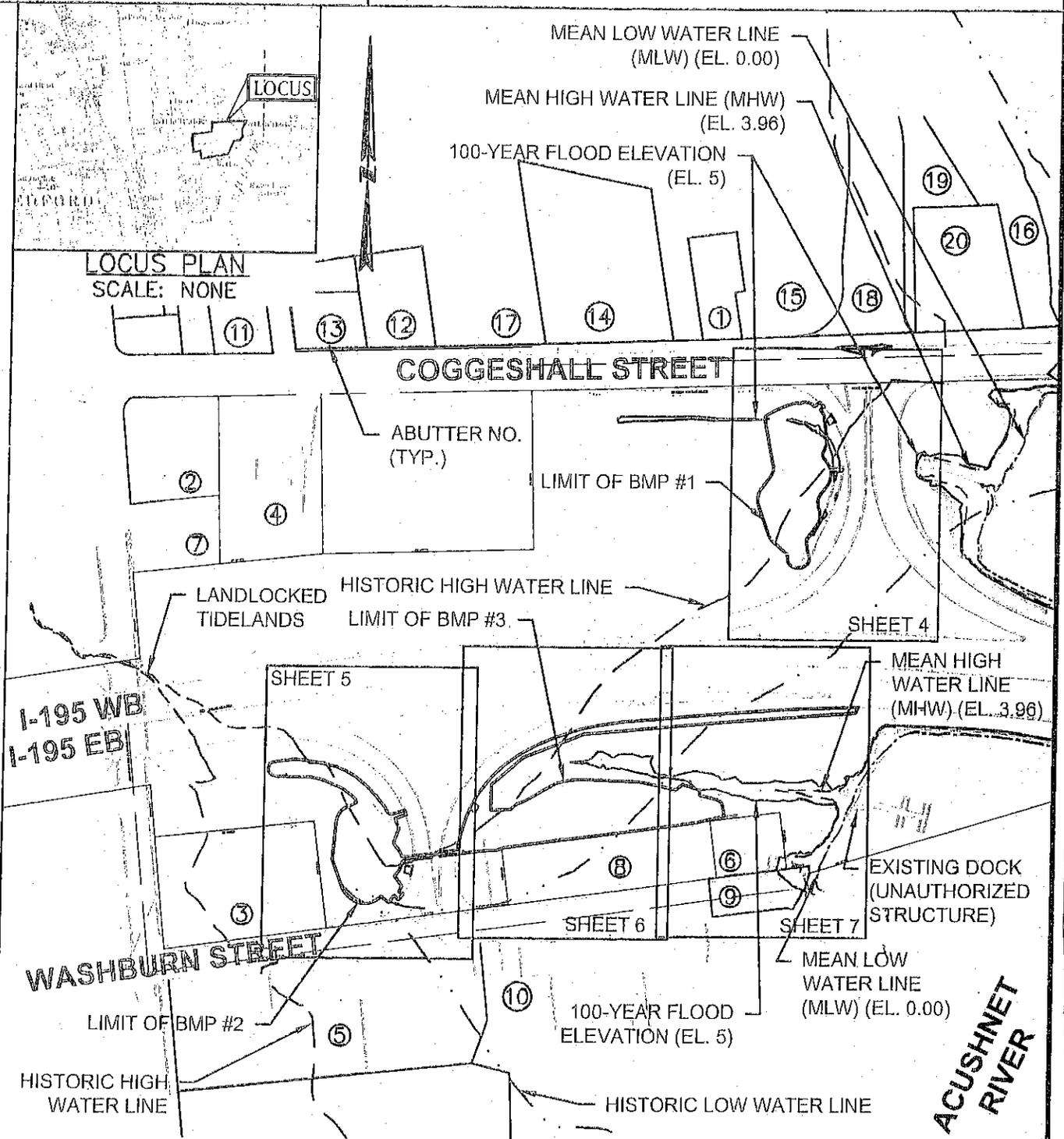
the further sum of -- (zero dollars and zero cents) ----- (\$0.00)

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON

Approved by the Governor

Governor



SITE PLAN

SCALE: 1" = 200'

0 100 200 400

**PLAN ACCOMPANYING
PETITION OF
MASSDOT**

TO CONSTRUCT AND MAINTAIN THREE
STORMWATER BMPs (CONSTRUCTED
STORMWATER WETLANDS) ALONG I-195
AT EXITS 16 AND 17

Prepared by:
THE BSC GROUP, INC.
15 ELKINS STREET
BOSTON, MA 02127
September 6, 2013
Revised: January 27, 2014

FILE:
MASSDOT PRJ. NO. 606583 SHEET 1 OF 11

DRAFT

W14-4056N
SEP 19 2014

ABUTTERS LIST

ABUTTER NUMBER	LOCATION	OWNER	CO-OWNER	OWNER ADDRESS
①	115 COGGESHALL STREET	FOURNIER, MICHAEL R. & PAUL R.		115-119 COGGESHALL STREET NEW BEDFORD, MA 02746
②	COGGESHALL STREET	CITY OF NEW BEDFORD, INTERCEPTING SEWER		131 WILLIAM STREET NEW BEDFORD, MA 02740
③	BELLEVILLE AVENUE	CITY OF NEW BEDFORD, PARK DEPT.		131 WILLIAM STREET NEW BEDFORD, MA 02740
④	170 COGGESHALL STREET	DOMALE INC.		1879 MINERAL SPRING AVENUE NORTH PROVIDENCE, RI 02904
⑤	8 WASHBURN STREET	8 WASHBURN STREET LLC.		72 NORTH WATER STREET, 3RD FLOOR NEW BEDFORD, MA 02740
⑥	WASHBURN STREET	NORTH WHARF TRUST, PACKER RALPH M. JR.	PACKER, DOROTHY P.	RFD 275, VINEYARD HAVEN, MA 02568
⑦	BELLEVILLE AVENUE	DACOSTA, URGEL R.		302 MOUNT PLEASANT STREET NEW BEDFORD, MA 02746
⑧	WASHBURN STREET	ROBINSON, RUSSELL B.		264 IRVING AVENUE PROVIDENCE, RI 02906
⑨	WASHBURN STREET	CITY OF NEW BEDFORD		133 WILLIAM STREET NEW BEDFORD, MA 02740
⑩	2 WASHBURN STREET	NORTH WHARF TRUST	PACKER, DOROTHY P.	233 WEST SPRING STREET VINEYARD HAVEN, MA 02568
⑪	3 MITCHELL STREET	OLIVEIRA, RONALD & FERREIRA, DAVID JR.	COGGESHALL STREET REALTY TRUST	10 ROSEANNE DRIVE FAIRHAVEN, MA 02719
⑫	157 COGGESHALL STREET	KHALIFE, MICHAEL J. & ANTOINE J.		171 COGGESHALL STREET NEW BEDFORD, MA 02746
⑬	171 COGGESHALL STREET	KHALIFE, MICHAEL J. & ANTOINE J.		2 MANOR DRIVE FAIRHAVEN, MA 02719

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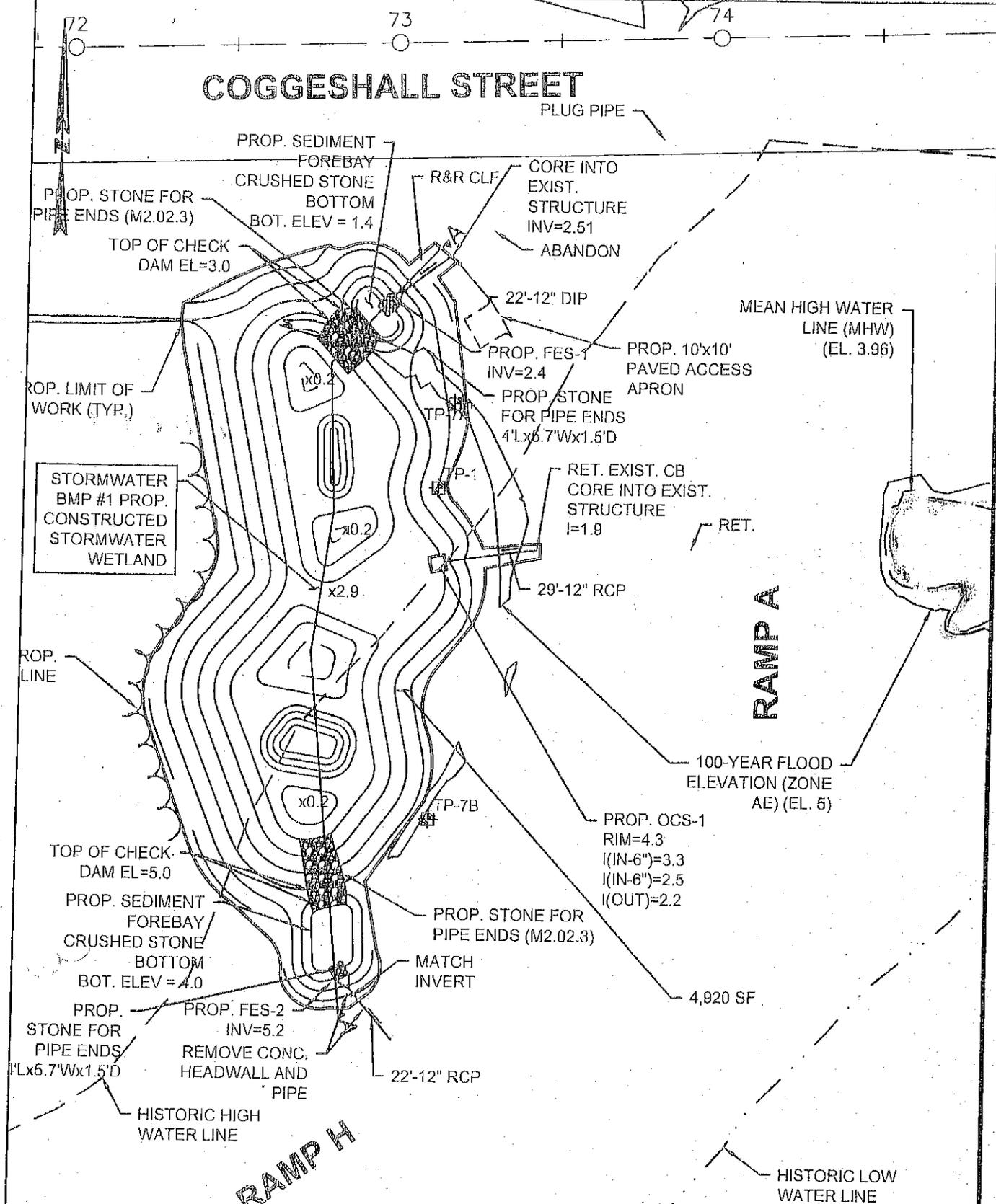
W14-4056N

SEP 19 2014

ABUTTERS LIST

ABUTTER NUMBER	LOCATION	OWNER	CO-OWNER	OWNER ADDRESS
⑭	COGGESHALL STREET	COGGESHALL-- NEW BEDFORD LLC.	DICKINSON DEVELOPMENT CORP.	1266 FURNACE BROOK PARKWAY QUINCY, MA 02169
⑮	85 COGGESHALL STREET	HIGHWAYVIEW LLC.	DICKINSON DEVELOPMENT CORP.	1266 FURNACE BROOK PARKWAY QUINCY, MA 02169
⑯	SAWYER STREET	UNITED STATES OF AMERICA	ARMY CORP OF ENGINEERS	696 VIRGINIA ROAD CONCORD, MA 01742
⑰	141 COGGESHALL STREET	ARCHLAND PROPERTY I LLC.	MCDONALDS CORP.	P.O. BOX 182571 COLUMBUS, OH 43218
⑱	COGGESHALL STREET	HIGHWAYVIEW LLC.	DICKINSON DEVELOPMENT CORP.	1266 FURNACE BROOK PARKWAY QUINCY, MA 02169
⑲	COGGESHALL STREET	HIGHWAYVIEW LLC.	DICKINSON DEVELOPMENT CORP.	1266 FURNACE BROOK PARKWAY QUINCY, MA 02169
⑳	67 COGGESHALL STREET	ELIAS ELAINE "TRUSTEE"	7-11 INC TENANTS TAX	P.O. BOX 711 DALLAS, TEXAS 75221-0711

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SEP 19 2014



COGGESHALL STREET

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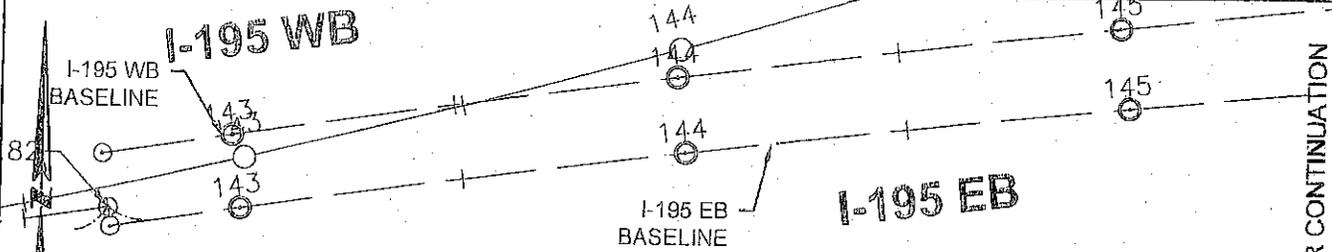
W14-4056N

SEP 19 2014

SCALE: 1" = 40'

0 20 40 80

GRADING PLAN - BMP #1

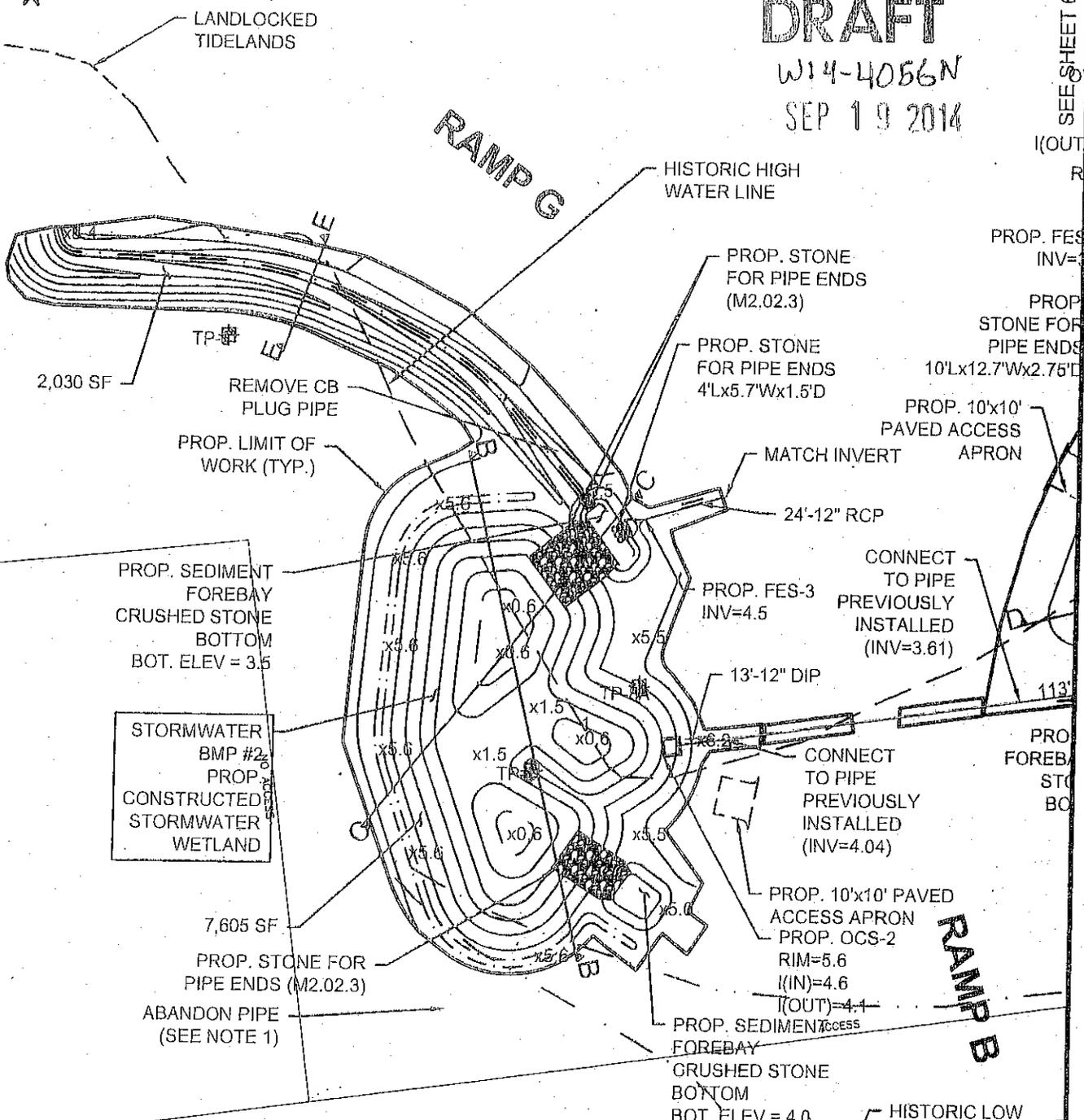


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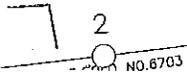
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SEP 19 2014

SEE SHEET 6 FOR CONTINUATION



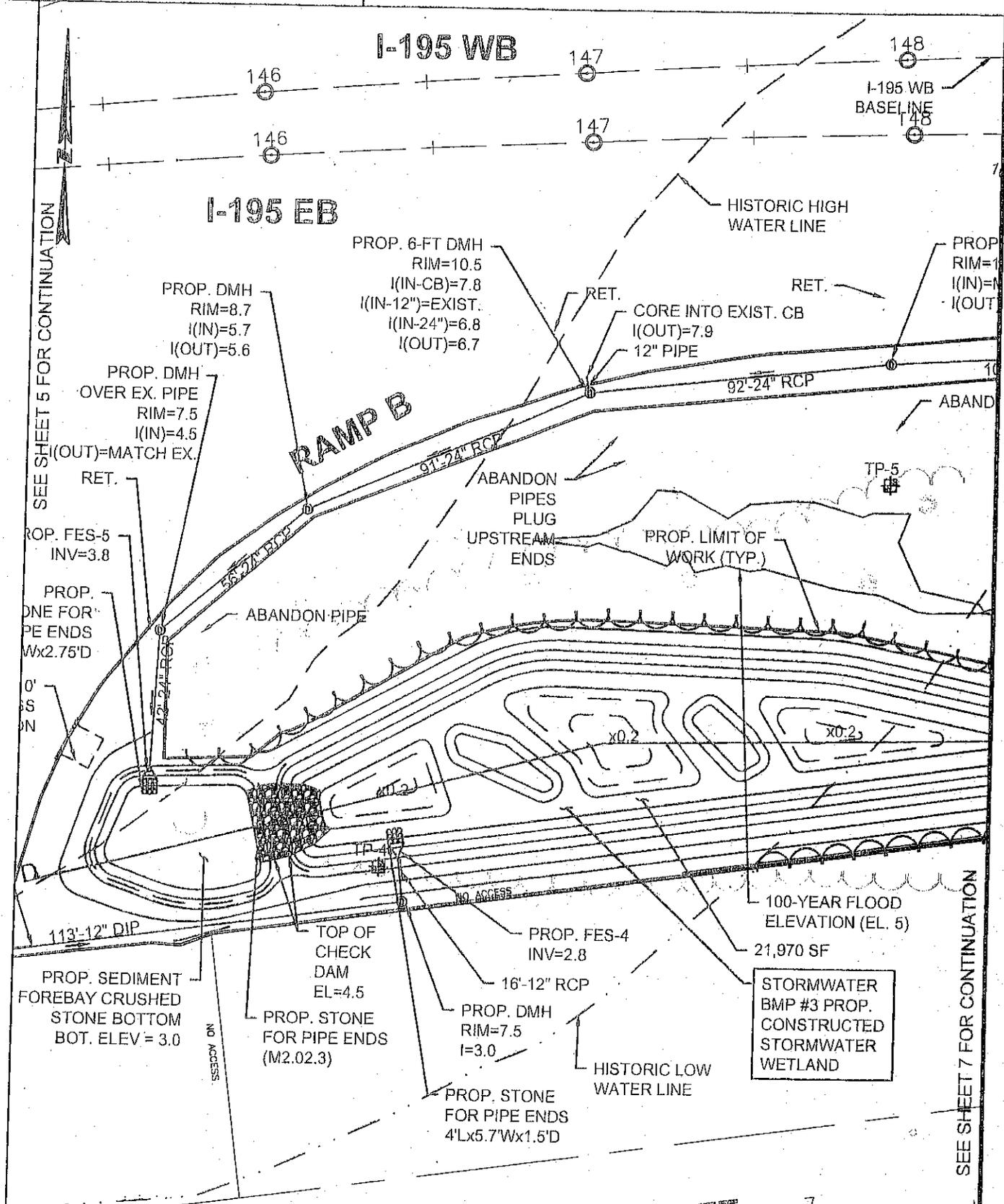
WASHBURN STREET



SCALE: 1" = 40'

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GRADING PLAN - BMP #2



SEE SHEET 5 FOR CONTINUATION

SEE SHEET 7 FOR CONTINUATION

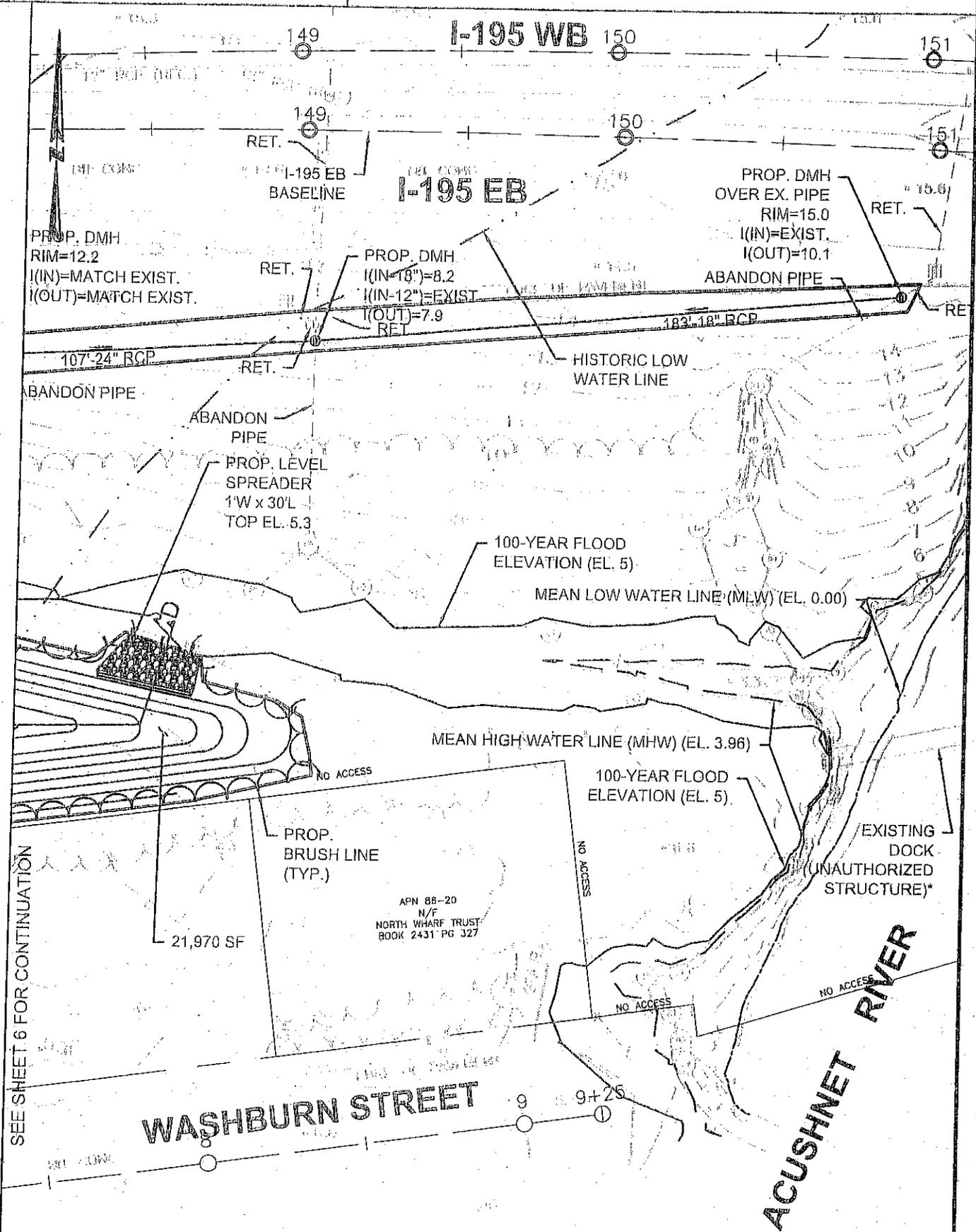
WASHBURN STREET

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W14-4056N

GRADING PLAN - BMP #3

SEP 19 2014

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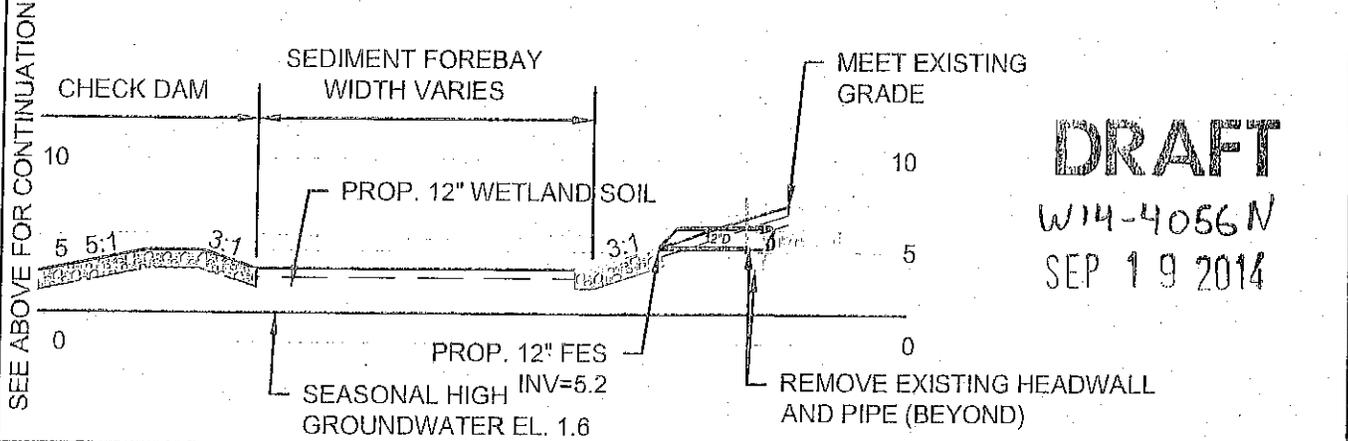
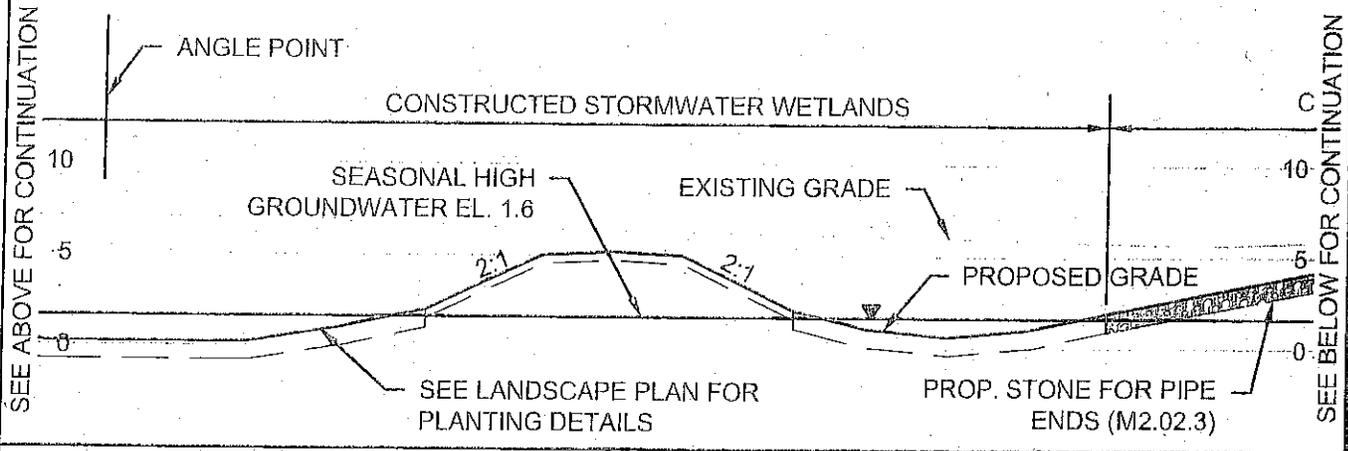
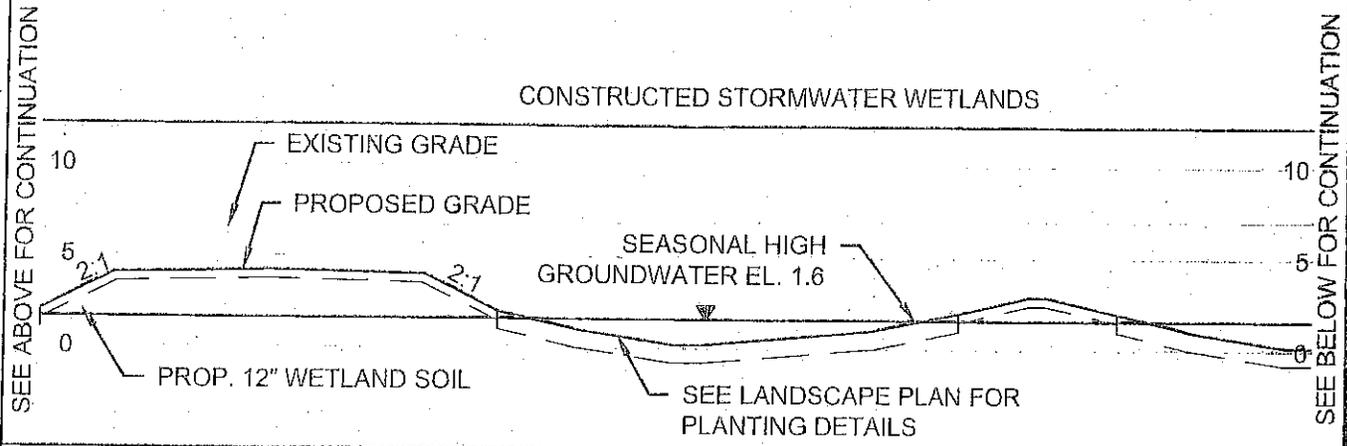
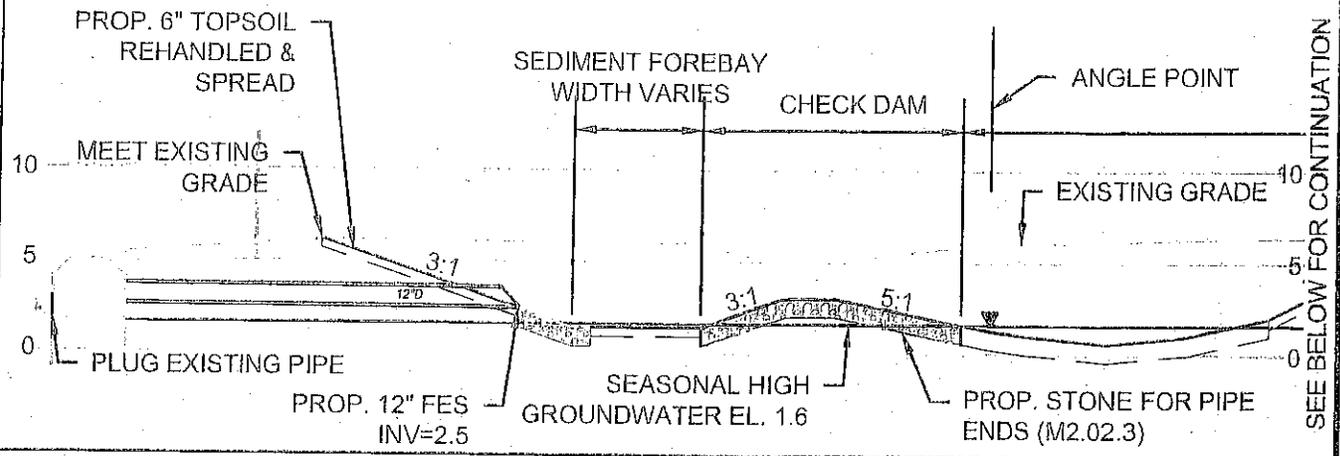
SEE SHEET 6 FOR CONTINUATION

*NOTE:
UNAUTHORIZED STRUCTURE NOT TO BE
AUTHORIZED UNDER THIS PERMIT.

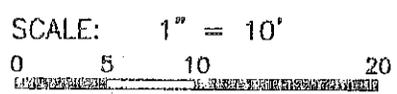
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W14-4056N
SEP 19 2014

SCALE: 1" = 40'
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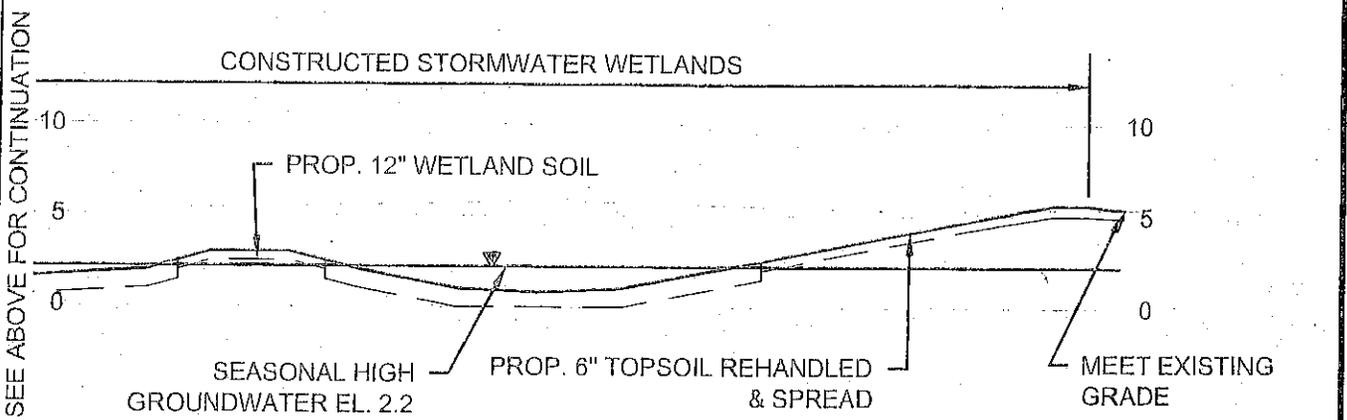
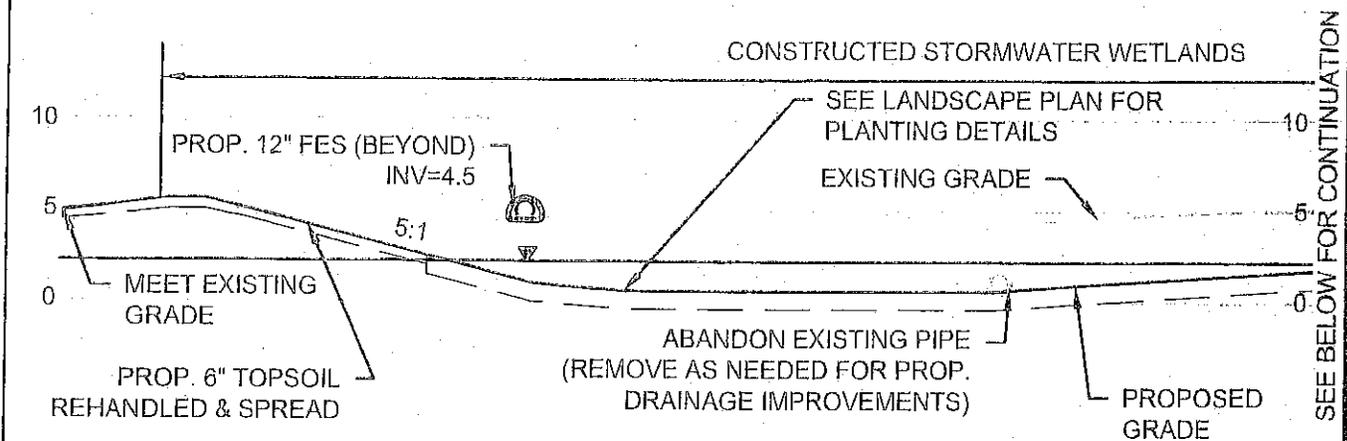
GRADING PLAN - BMP #3



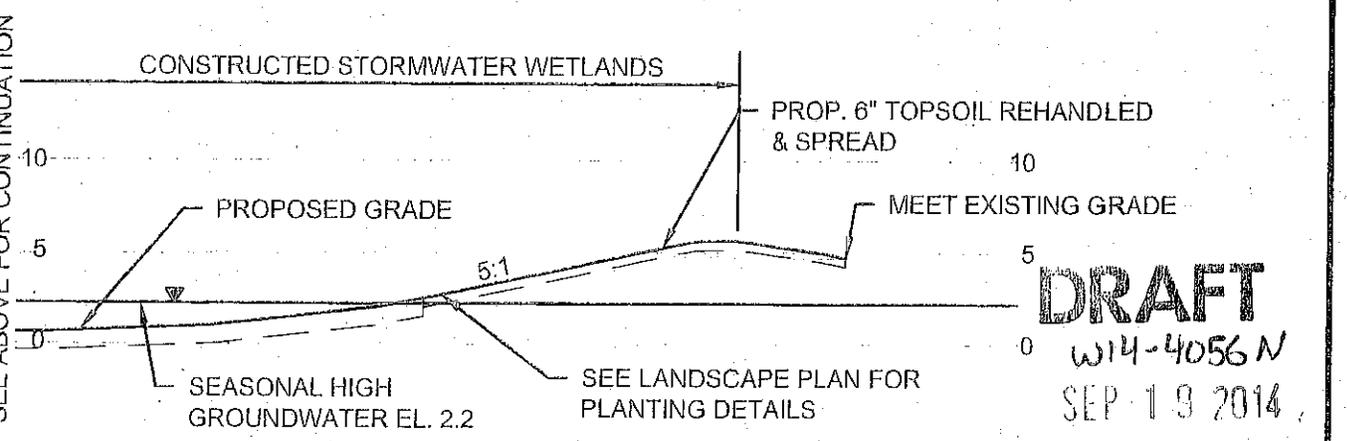
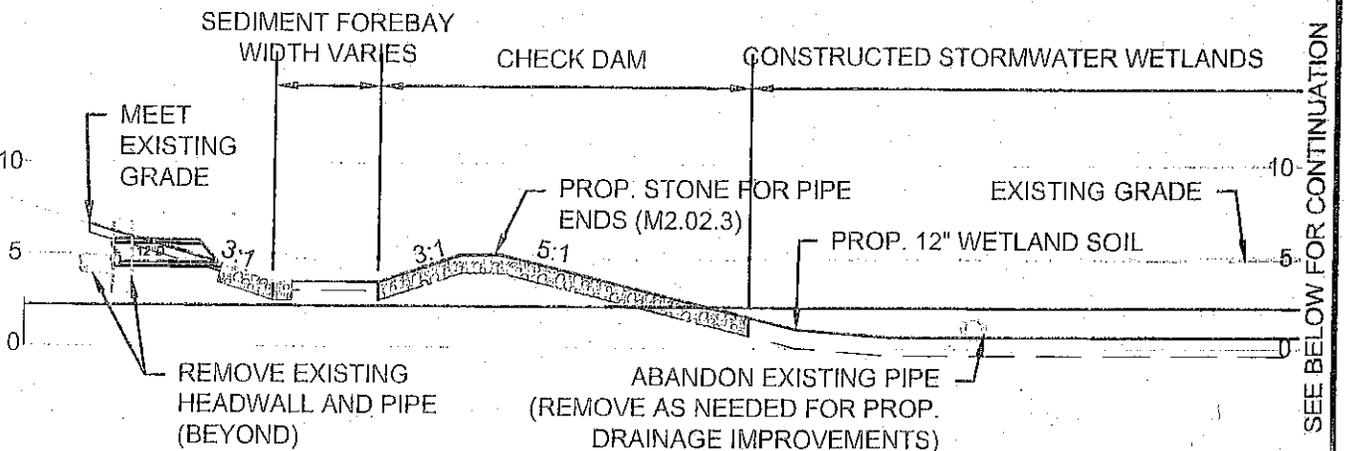
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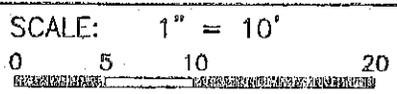
BMP #1: SECTION A-A



BMP #2: SECTION B-B

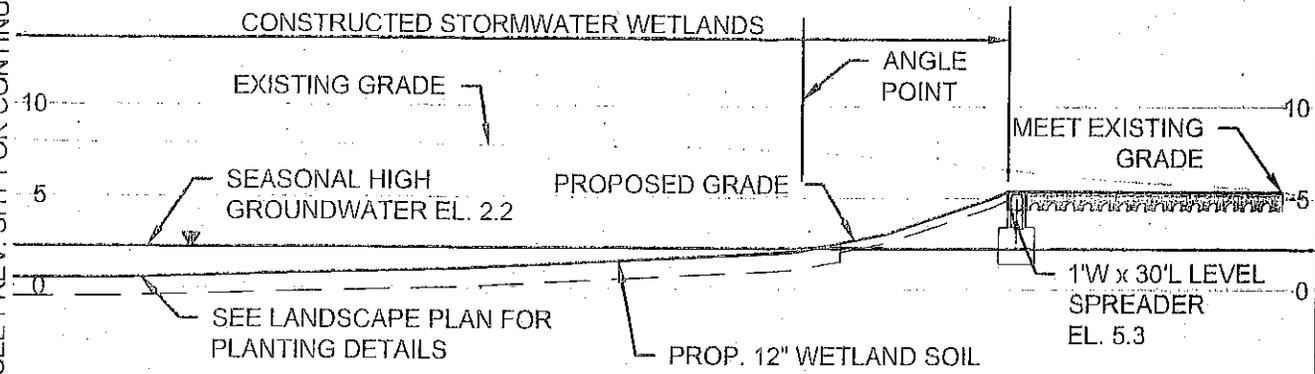


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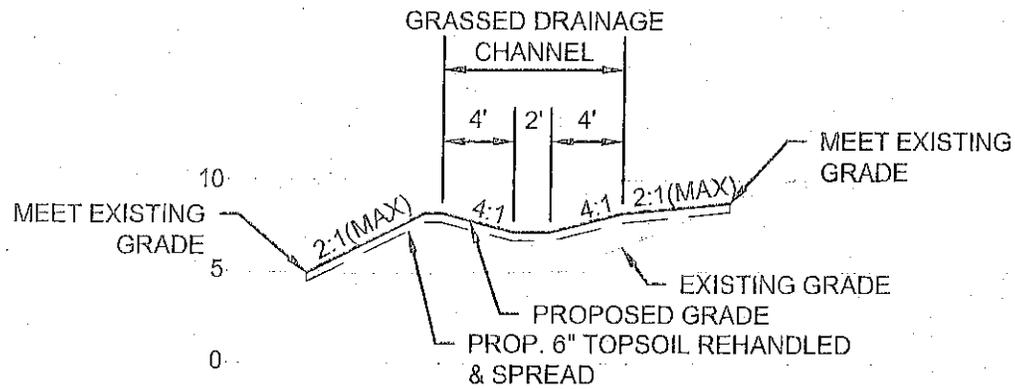


BMP #2: SECTION C-C

SEE PREV. SHT FOR CONTINUATION



BMP #3: SECTION D-D



DRAINAGE CHANNEL: SECTION E-E

DRAFT

W14-4056N

SEP 19 2014

SCALE: 1" = 10'

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