



DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 2946
PORTLAND, OREGON 97208-2946
September 3, 2003

REPLY TO
ATTENTION OF:

Operations Division
Regulatory Branch
Corps No.: 200200175

Ms. Elane Stewart
Metro, Smith and Bybee Lakes Wildlife Area
600 NE Grand Avenue
Portland, Oregon 97232-2736

Dear Ms. Stewart:

Enclosed are two unsigned copies of your requested permit.

In order to make this permit valid, please read the conditions of the permit carefully, complete both copies including signature, printed name and title, and return both copies to the Regulatory Branch, Permits Section, at the letterhead address. Your copy of the fully executed permit will then be returned to you.

You are cautioned, however, not to begin work under the terms of this permit until you receive the fully executed document, as such action would be in violation of Federal law.

Recent changes in U.S Army Corps of Engineers regulations have established a process through which you may object to certain terms and conditions of the enclosed permit, and ask that the permit be modified accordingly. Please see the enclosed Notification of Administrative Appeal Options and Process and Request for Appeal for further information about that process.

If you have any questions regarding our evaluation process, please contact Ms. Mary J. Headley at the letterhead address or telephone (503) 808-4392.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lawrence C. Evans".

Lawrence C. Evans
Chief, Regulatory Branch

Enclosures



DEPARTMENT OF THE ARMY
PORTLAND DISTRICT, CORPS OF ENGINEERS
POST OFFICE BOX 2946
PORTLAND, OREGON 97208-2946

September 4, 2003

REPLY TO
ATTENTION OF:

Operations Division
Regulatory Branch
Corps No.: 200200175

Ms. Elane Stewart
Metro, Smith and Bybee Lakes Wildlife Area
600 NE Grand Avenue
Portland, Oregon 97232-2736

Dear Ms. Stewart:

Enclosed are your fully executed Department of the Army Permit and a notice of authorization, which must be posted at the work site.

Please carefully read the permit and its conditions. In addition, if you have a contractor and/or agent, please review these conditions with them to ensure that the work is performed in accordance with the permit terms. Also be aware that other authorizations from Federal, state, or local governments may be required by law. If the work is not completed prior to the permit expiration date, you may apply for a time extension. We recommend you apply for a time extension at least 90 days before the expiration date of the permit.

If you have any questions, please contact Ms. Mary J. Headley at the letterhead address or telephone (503) 808-4392.

Sincerely,


for
Lawrence C. Evans
Chief, Regulatory Branch

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Metro	File Number: 200200175	Date: 3SEP2003
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
XX	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ccwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice. Also, see Section II.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record. If you believe you have additional information pertinent to an approved jurisdictional determination {see Part D} with which you disagree, that new information should first be sent to the Portland District for reconsideration. Following the District's reconsideration, the approved jurisdictional determination can still be appealed as noted in Part D)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

U.S. Army Corps of Engineers
Portland District Office
CENWP-OP-GP (ATTN: Jim Goudzwaard)
Post Office Box 2946
Portland, Oregon 97208-2946

If you decide to appeal an action under Parts B, C or D above, send a copy of each page to:

U.S. Army Corps of Engineers
Northwestern Division
Attn: Mores Bergman, Appeal Review Officer
12565 West Center Road
Omaha, Nebraska 68144-3869
Telephone (402) 697-2533

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

DEPARTMENT OF THE ARMY PERMIT

Applicant: Metro, Smith and Bybee Lakes Wildlife Area (Ms. Elaine M. Stewart, Manager)

Application Number: 200200175

Issuing Office: U.S. Army Corps of Engineers, Portland District

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 Corps of Engineers 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 involves access road improvements, removal of an existing dam and tidegate, and replacement with a large, multi-celled water control structure with a fish ladder. The project involves the removal of approximately 2000 cubic yards total from the existing access road and existing structure. Additionally, the project involves the discharge of approximately 610 cubic yards of fill material associated with the new water control structure, and 280 cubic yards of fill material associated with access road improvements. The majority of the fill associated with the access road will occur above the ordinary high water line. The borrow-source of the fill material will be a combination of onsite excavated materials (mentioned above), and from a local quarry. Excess excavated material will be transported to an approved upland disposal site. The project will impact a total of approximately 0.06 acre of waters of the United States.

Project Location: Smith and Bybee Lakes Wildlife Area at the southeast corner of Bybee Lake and the east end of the North Slough, a tributary of the Columbia Slough, in Section 36, Township 2 North, Range 1 West, and Section 31, Township 2 North, Range 1 East, Portland, Multnomah County, Oregon

Purpose: The purpose of the project is to enhance the historic functions and values of Smith and Bybee Lakes, and provide fish access to, and passage from, these valuable rearing habitats. The existing dam converted nearly 2000 acres of seasonal emergent and forested wetlands into permanent lakes and isolated Smith and Bybee Lakes from the North Columbia Slough.

Drawing: Six drawings labeled Metro, COE#200200175 (Enclosure 1)

General Conditions:

1. The time limit for completing the work authorized ends on August 31, 2006. 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. You 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 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. 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 (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. The following special condition is a part of all Department of the Army permits that provide authorization under Section 10 of the Rivers and Harbors Act, regardless whether the permit provides such authorization under Section 10 alone, or in combination with authorization under other laws:

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

2. Endangered Species Act and Magnuson Stevens Act Requirements. This Department of the Army permit does not authorize you to take a listed species. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g., an ESA Section 10 permit, or a Biological Opinion under ESA Section 7, with 'incidental take' provisions with which you must comply). 'Take' (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct) of an endangered or threatened species is prohibited without a specific permit or exemption. Incidental take is take of listed species that results from, but is not the purpose of, the Federal agency or the Permittee carrying out an otherwise lawful activity.

Therefore, Metro is required to assure compliance with all terms and conditions, and implement the reasonable and prudent measures, of the enclosed biological opinion of the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (Enclosure 3). This Opinion is the result formal consultation completed by the U.S. Fish and Wildlife Service under Section 7 of the Federal Endangered Species Act, and the Magnuson-Stevens Act for Essential Fish Habitat.

Further Information:

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

- (XX) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (XX) Section 404 of the Clean Water Act (33 U.S.C. 1344).

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 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.

James Desmond 9-4-03
(PERMITTEE SIGNATURE) (DATE)

JAMES DESMOND DIRECTOR, METRO PARKS AND
(PRINTED NAME) (TITLE) GREENSPACES

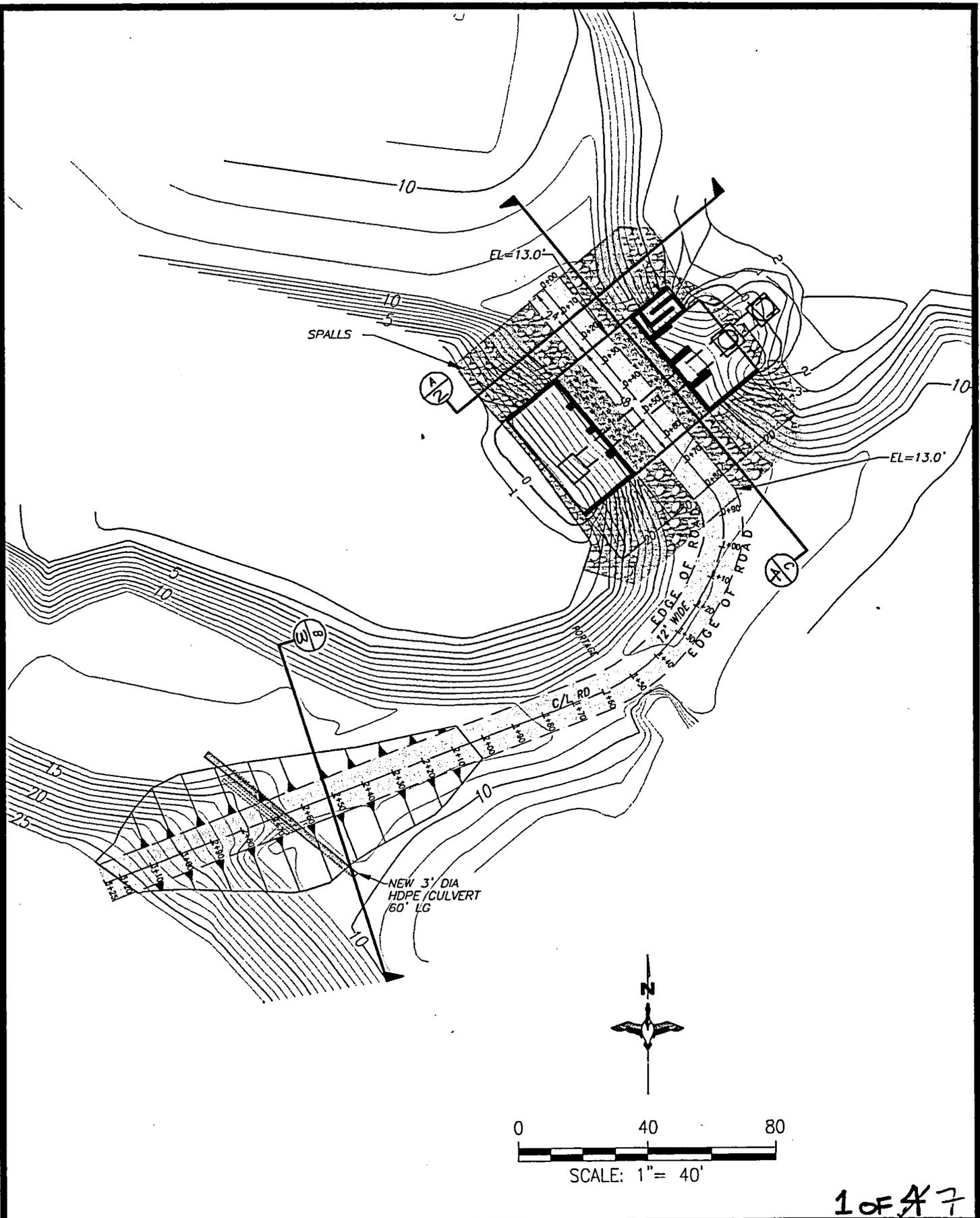
This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

Donald Ford 4 SEPTEMBER 2003
(DISTRICT ENGINEER) (DATE)

~~FOR~~
Richard W. Hobernicht
Colonel, Corps of Engineers
District Engineer

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

(TRANSFEREE) (DATE)



1 OF 7



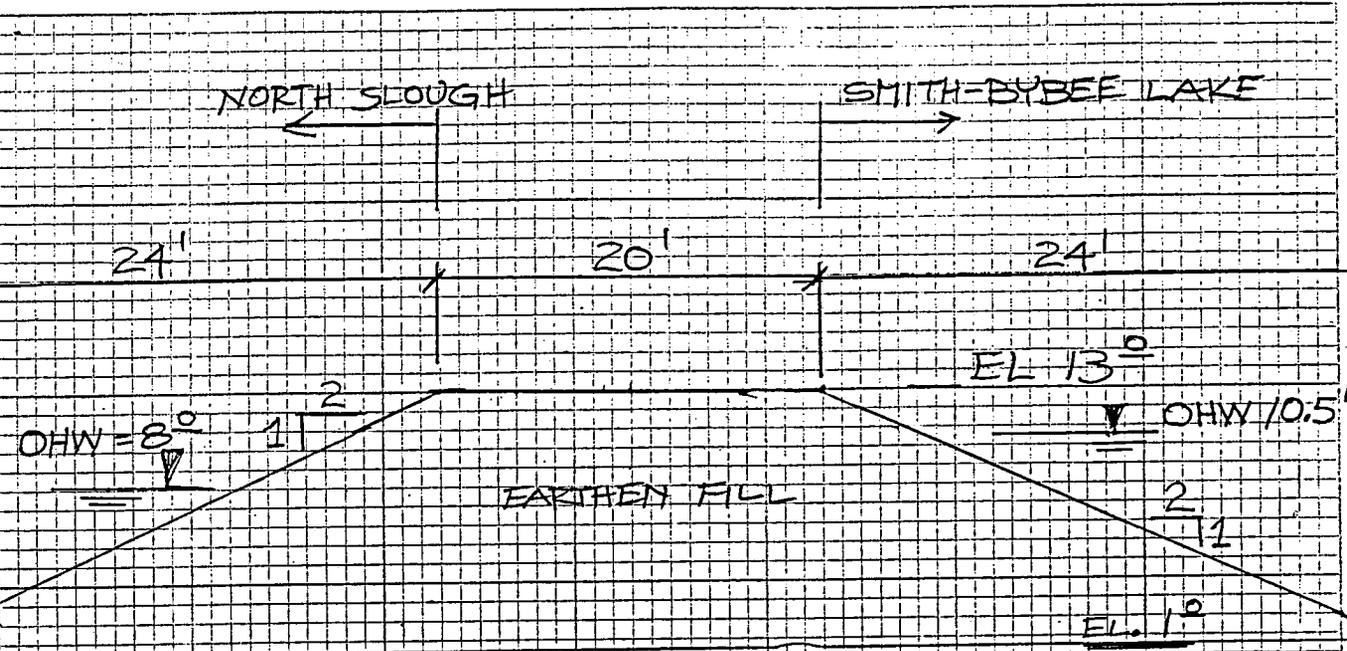
PROJECT NO. OR-32-1

**SMITH AND BYBEE WETLANDS
PROJECT PLAN VIEW**

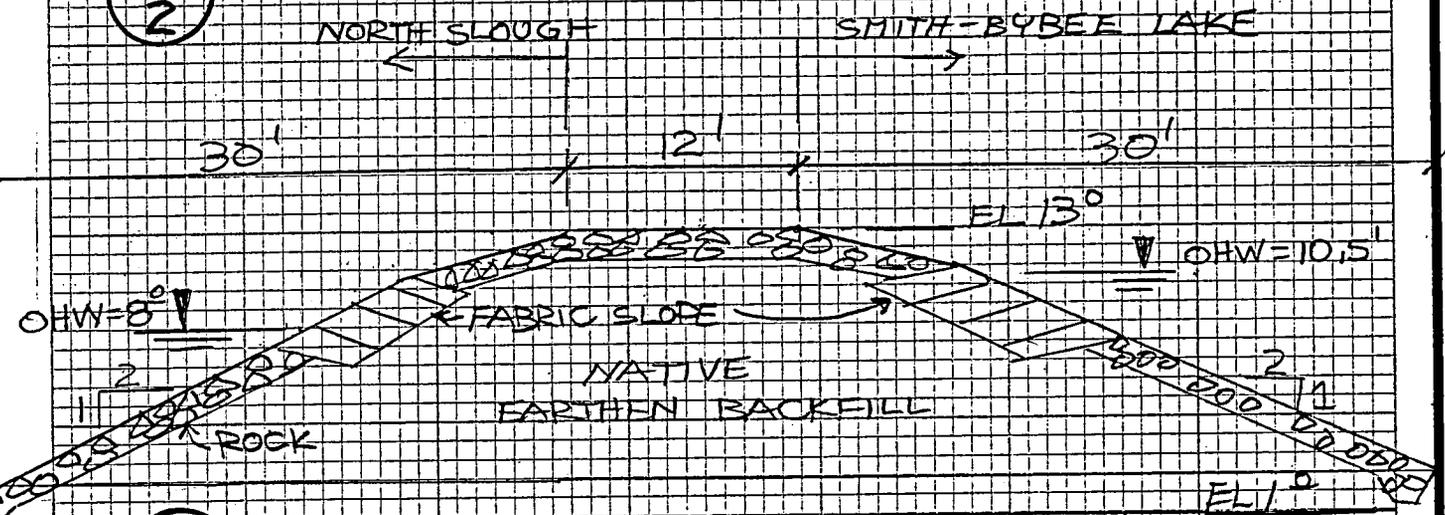
DESIGNED BY:	GW
DRAWN BY:	DMC
SURVEYED BY:	DU
CHECKED BY:	

ENCLOSURE 1

#OR Projects\WOr-032-1 Metro Smith Bybee\WACAD\PROJECT_S&B\dwg\WACE_ACCESS_RD.dwg, 09/03/2003 08:19:34 AM



(A) DIKE EXISTING X-SECTION
2



(A) DIKE PROPOSED X-SECTION
2



Sheet **2**

2 of 7

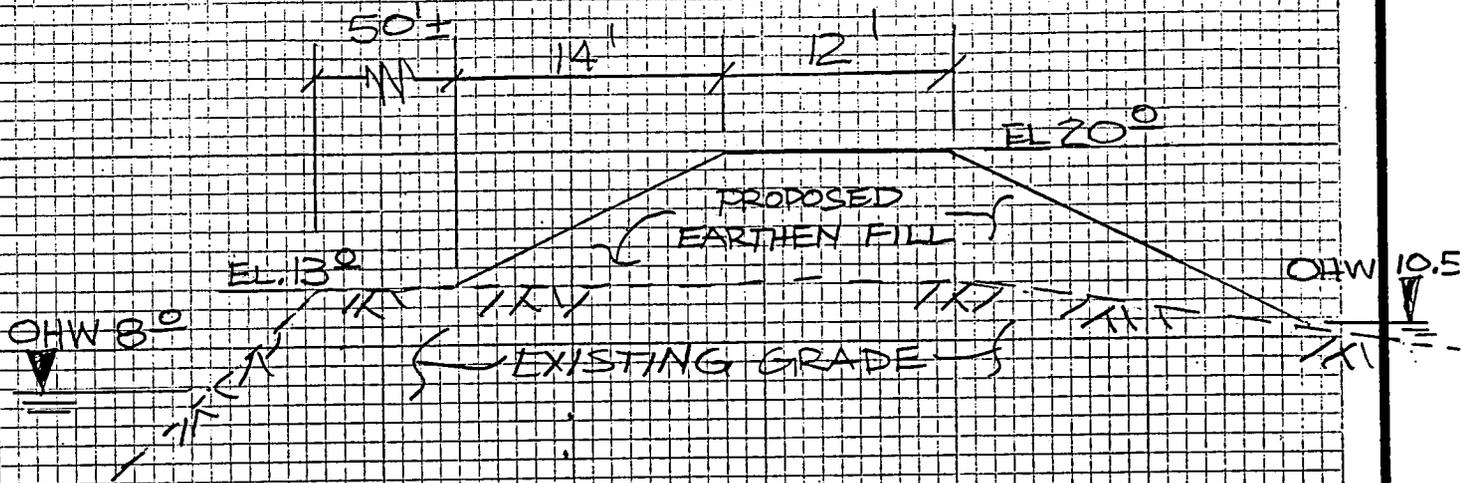


DUCKS UNLIMITED INC.
PacNW Field Office (360)885-2011

PROJECT NO. **OR-32-1 SMITH-BYBEE**

DESIGNED BY: **GW**
DRAWN BY: **GW**
SURVEYED BY:
CHECKED BY:

WOR Projects\WOr-032-1 Metro Smith Bybee\WACAD\PROJECT_S&B\Wdwg\WACE_ACCESS_RD.dwg, 09/03/2003 08:19:34 AM



(B) PROPOSED ACCESS ROAD X-SECT
(3)

TOTAL NET FILL = 275 yd



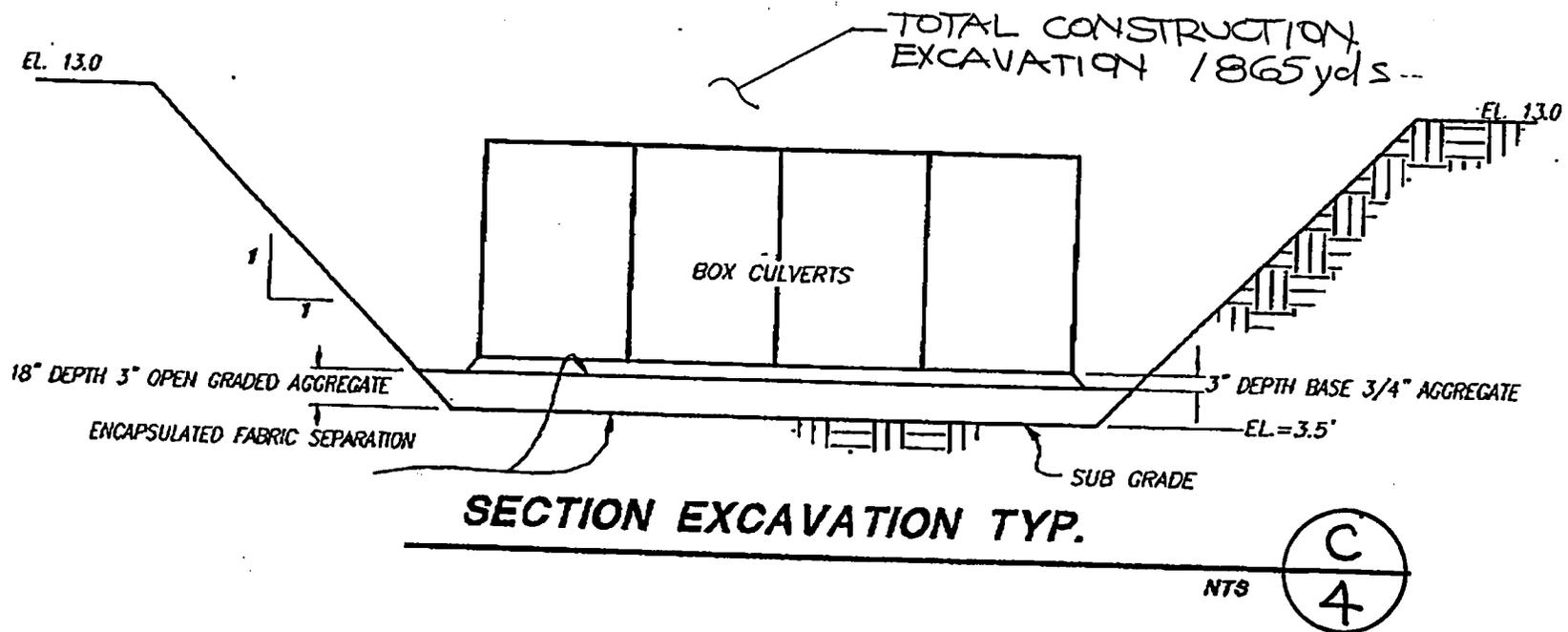
Sheet **3**

3 of 47



PROJECT NO. _____

DESIGNED BY: _____
 DRAWN BY: _____
 SURVEYED BY: _____
 CHECKED BY: _____



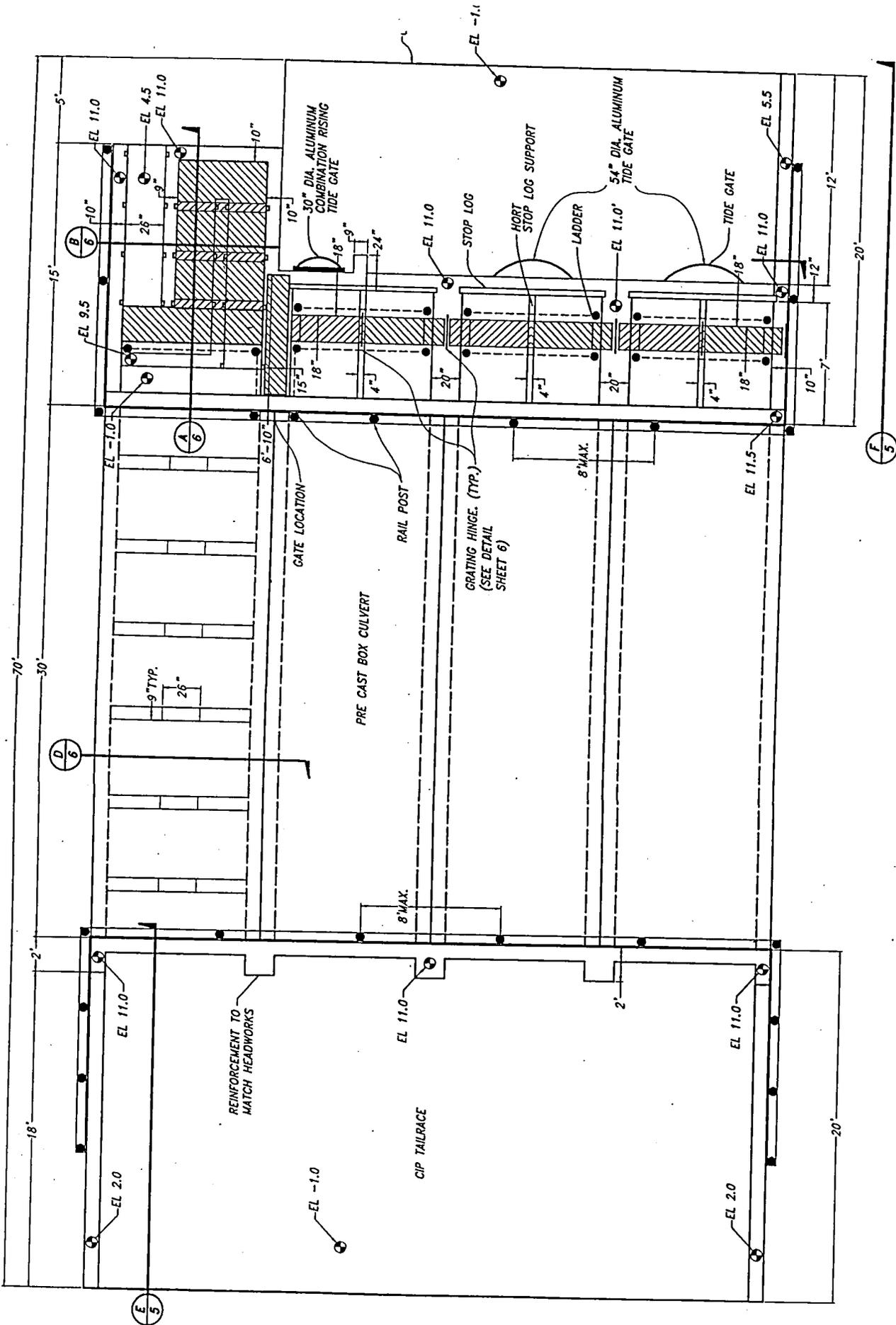
MATERIAL BALANCE:

TOTAL EXCAVATION = 2000 yd - 135 yd (VOLUME EXIST STRUCT) = 1865 yd

NATIVE BACK FILL = 2000 yd - 900 yd (NEW STRUCT VOLUME) - 610 yd (IMPORT FILL)
= 490 yd =

SPOIL EXPORT = 1865 yd - 490 yd = 1375 yd

NET FILL = EXISTING VOLUME - PROPOSED VOLUME = 0 yd



PLAN VIEW
WATER CONTROL STRUCTURE



Oregon

Theodore R. Kulongoski, Governor

Department of Environmental Quality

811 SW Sixth Avenue
Portland, OR 97204-1390

503-229-5696

TTY 503-229-6993

August 22, 2003

Mary Headley
U.S. Army Corps of Engineers
ATTN: CENPP-OP-GP
P.O. Box 2946
Portland, OR 97208-2946

REC'D AUG 25 2003

Dear Ms. Headley:

The Department of Environmental Quality (DEQ) has reviewed the U.S. Army Corps of Engineers (USACE) permit application #2002-00175 [Division of State Lands (DSL) application # 25189-GA]. The applicant, Metro Regional Parks and Greenspaces, proposes to remove an existing dam and flap gate and replace it with a multi-celled water control structure to accommodate fish passage and enhance habitat management in the Smith and Bybee Lakes Wildlife Area. The project is located at the southeast corner of Bybee Lake and the east end of North Slough, a tributary of Columbia Slough in Portland, Multnomah County, Oregon (Section 36, T2N/R1W and Section 31, T2N/R1E).

This project is funded by the U.S. Fish and Wildlife Service through a North American Wetlands Conservation Act grant. Coordination has also occurred with Ducks Unlimited. The primary purpose of this action is to restore, to the maximum extent possible, natural hydrology to this large wetland complex. The project will restore approximately 1,600 acres of seasonal emergent and forested wetland habitat to the Smith and Bybee Lakes system. Water levels will continue to be manipulated during some periods of the year to assist in the control of nonnative plants.

A total of approximately 1,068 cubic yards of material, including the current structure will be removed. About 200 cubic yards of that total may be reused to bed the replacement structure. The remainder will be disposed of at an upland site.

On August 4, 2003 the National Marine Fisheries Service (NOAA Fisheries) completed formal consultation on the proposed project pursuant to the Endangered Species Act (ESA). The biological opinion delivered to the U. S. Fish and Wildlife Service concluded that the proposed action is not likely to jeopardize the continued existence of listed species occurring in the project area, but will adversely effect essential fish habitat (EFH) for starry flounder, and, coho and chinook salmon in the action area. As required by section 7 of the ESA, NOAA Fisheries included discretionary conservation measures, and reasonable and prudent measures with nondiscretionary terms and conditions that they believe are necessary to minimize the potential for incidental take associated with this action.

Smith Lake and Bybee Lake are classified as Water Quality Limited under Section 303 (d) of the Federal Clean Water Act for the following parameters: Aquatic Weeds or Algae, and pH (Summer).

Based on information provided by the applicant, DEQ does not anticipate any long-term violations of State Water Quality standards, including Oregon Administrative Rule (OAR) 340-

041-0026 (1)(a), Antidegradation Policy for Surface Waters, provided the conditions which follow are incorporated into the permit.

- 1) **Fish protection/ODFW timing:** All in-water work shall occur within the Oregon Department of Fish and Wildlife's (ODFW) preferred time window as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources, June 2000. Exceptions to the timing window must be reviewed and approved by the Division of State Lands (DSL), ODFW, and NOAA's National Marine Fisheries Service (NOAA Fisheries).
- 2) **Aquatic life movements:** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species that normally migrate through the area. Unobstructed fish passage must be provided at all times during any activity unless otherwise authorized.
- 3) **Turbidity/erosion controls:** The authorized work shall not cause turbidity of affected waters to exceed 10% over natural background turbidity 100 feet downstream of the turbidity causing activity. For projects proposed in areas with no discernible gradient break (gradient of 2% or less), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This turbidity standard exceedance interval applies only to coastal lowlands, floodplains, and valley bottoms. For projects in all other areas, the turbidity standard can be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects may also be subject to additional reporting requirements.

Turbidity shall be monitored during active in-water work periods. Monitoring points shall be an undisturbed site (representative background) 100 feet upstream from turbidity causing activity (i.e., fill or discharge point), 100 feet downstream from the fill point, and at the point of fill. A turbidimeter is recommended; however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

Practicable erosion control measures which shall be implemented, as appropriate, include but are not limited to the following:

- a) Place fill in the water using methods that avoid disturbance to the maximum practicable extent (e.g. placing fill with a machine rather than end-dumping from a truck);
- b) Prevent all construction materials and debris from entering waterway;
- c) Use filter bags, sediment fences, sediment traps or catch basins, silt curtains, leave strips or berms, Jersey barriers, or other measures sufficient to prevent movement of soil;
- d) Use impervious materials to cover stockpiles when unattended or during rain event;
- e) Erosion control measures shall be inspected and maintained daily, to ensure their continued effectiveness;
- f) No heavy machinery in a wetland or other waterway;

- g) Use a gravel staging area and construction access;
- h) Fence off planted areas to protect from disturbance and/or erosion; and,
- i) Flag or fence off wetlands adjacent to the construction area.

Turbidity shall be measured (or visually assessed) and recorded at the designated monitoring interval prescribed above during periods of active construction. The designated person attending the monitoring equipment shall be responsible for notifying the project foreman of any exceedance of the turbidity standard. If a 10% exceedance of the background level occurs at 100 feet below the project site, modify the activity causing the problem and continue to monitor at the proper interval. If exceedances occur with two consecutive measurements stop the activity causing the turbidity until the problem is resolved.

4) **Deleterious waste materials:**

- a) Petroleum products, chemicals, fresh cement, riprap grout, or other deleterious waste materials shall not be allowed to enter waters of the state;
- b) Use only clean fill free of waste and polluted substances to maintain water quality;
- c) Best management practices (BMPs) shall be employed in order to prevent discharges of spills to surface or ground water;
- d) Machinery refueling and maintenance is to occur off site or in a confined designated area away from all waterways. BMP's shall be employed in order to prevent discharges of spills to surface or ground waters; and,
- e) The applicant must remove all foreign materials, refuse, and waste from the area.

5) **Planting/re-vegetation:**

- a) Plant new vegetation or replace any existing vegetation in areas which may be disturbed as a result of this project, in order to restore the function and stability of the landscape and habitat;
- b) 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; and
- c) The standard for success is 80% cover for native plant species. Temporary fencing off of planted areas may be required to insure success.

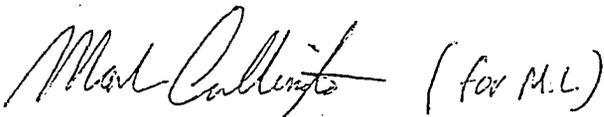
6) Every effort must be made to conduct the water control structure replacement construction activities for this project in the "dry", i.e. berms or other structures which isolate the area from flow-through must be left in place on both the upstream and downstream ends during earth moving and construction activities.

7) During construction storm water runoff or wash water from disturbed soils, permanent impervious road surfaces, access lanes, and parking lots shall be first treated by a facility specifically designed to remove storm water contaminants before entering state waterways or wetlands, including mitigation wetlands, so as to minimize contaminants entering those water bodies.

- 8) Provide a buffer zone, where practicable (minimum width of 50 feet recommended) in order to protect existing riparian areas, and existing and mitigation wetlands.
- 9) DEQ reserves the option to modify, amend or revoke this water quality certificate (WQC), as necessary, in the event new information indicates that the project activities are having a significant adverse impact on State water quality or critical fish resources.
- 10) A copy of this WQC letter shall be kept on the job site and readily available for reference by the Corps of Engineers, DEQ personnel, the contractor, and other appropriate state and local government inspectors.
- 11) This WQC is invalid if the project is operated in a manner not consistent with the project description contained in the permit application.
- 12) DEQ is to have site access upon reasonable request.
- 13) If you are dissatisfied with the conditions contained in this certification, you may request a hearing before the Environmental Quality Commission. Such request must be made in writing to the Director of DEQ within 20 days of the mailing of this certification. You may also request written information about alternative dispute resolution services under Oregon Revised Statute 183.502, including mediation or any other collaborative problem-solving process.

The DEQ hereby certifies that this project complies with the Clean Water Act and state water quality standards, if the above conditions are made a part of the Federal permit. The applicant shall notify the DEQ of any change in the ownership, scope, or construction methods of the project subsequent to certification. If you have any questions, please contact Tom Melville at (503) 229-5845.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael T. Llewelyn" with "(for M.L.)" written in parentheses to the right.

Michael T. Llewelyn, Administrator
Water Quality Division

T:TM.Certhead.02-175

Cc: Applicant
Kirk Jarvie, DSL
Bob Baumgartner, DEQ
Tim Spencer, DEQ
Wm. Michael Jones, St. Johns Neighborhood Association



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

Refer to:
2002/00163

August 4, 2003

Mr. Carey Smith
U.S. Fish and Wildlife Service
911 N.E. 11th Avenue
Portland, OR 97232-4181

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation on the Smith and Bybee Lakes Habitat Restoration Project, Columbia River, Multnomah County, Oregon (USFWS MBSP/MBHP)

Dear Mr. Smith:

Enclosed is a biological opinion (Opinion) prepared by NOAA's National Marine Fisheries Service (NOAA Fisheries) pursuant to section 7 of the Endangered Species Act (ESA) on the effects of building a water control structure within Smith and Bybee Lakes, near the confluence of the Willamette and Columbia Rivers, in Multnomah County, Oregon. In this Opinion, NOAA Fisheries concludes that the proposed action is not likely to jeopardize the continued existence of the following ESA-listed anadromous salmon and steelhead: Upper Columbia River (UCR) chinook salmon (*Oncorhynchus tshawytscha*), Lower Columbia River (LCR) chinook salmon, LCR steelhead (*O. mykiss*), Middle Columbia River (MCR) steelhead, Upper Columbia River (UCR) steelhead, Upper Willamette River (UWR) steelhead, Snake River (SR) spring/summer-run chinook salmon (*O. tshawytscha*), SR fall-run chinook salmon, SR sockeye salmon (*O. nerka*), SR steelhead (*O. mykiss*), and Columbia River (CR) chum (*O. keta*). As required by section 7 of the ESA, we have included reasonable and prudent measures with non-discretionary terms and conditions that are necessary to minimize the potential for incidental take associated with this action.

This document also serves as consultation on essential fish habitat pursuant to section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR Part 600.



ENCLOSURE 3

If you have any questions regarding this consultation, please contact Pat Oman of my staff in the Oregon Habitat Branch at 503.231.2313.

Sincerely,

Michael R Course

D. Robert Lohn
Regional Administrator

cc: Chuck Lobdell, Ducks Unlimited
Kirk Jarvie, DSL