

**Oregon Clean Energy, LLC**  
816 N. Lallendorf Road  
Oregon, Ohio 43616

*Via Electronic Filing*

December 17, 2014

OCE-OPSB-003

Ms. Barcy McNeal  
Administration/Docketing  
Public Utilities Commission of Ohio  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, OH 43215-3793

**Re: Oregon Clean Energy, LLC**  
**Case No. 12-2959-EL-BGN**

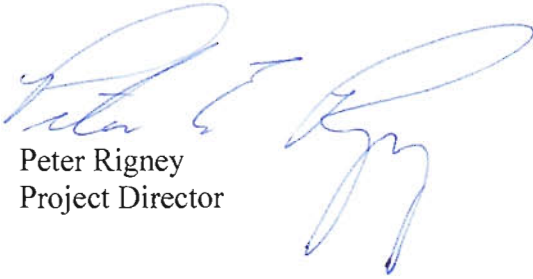
Dear Ms. McNeal:

The May 1, 2013 Opinion, Order, and Certificate approving Oregon Clean Energy, LLC's ("Oregon") Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility ("Certificate") and the March 15, 2013 Second Supplement to Application established a set of conditions and supplemental commitments as part of the Certificate. Specifically, in part, **Commitment #20**, which included in the Second Supplement filed on March 15, 2013, requires that:

**Prior to the commencement of construction activities that require permits or authorizations by federal or state laws and regulations, the Applicant will obtain and comply with such permits or authorizations. The Applicant will provide copies of permits and authorizations, including all supporting documentation, to Staff within seven days of issuance or receipt by the Applicant. The Applicant will provide a schedule of construction activities and acquisition of corresponding permits for each activity at the preconstruction conference.**

Attached to this letter is an updated copy of The Department of the Army Nationwide Permit No. 39 approval dated November 26, 2014. The received hard copy of the subject permit contained additional information not included in the permit docketed on December 4, 2014. The preliminary JD was signed and received by The Corps on December 3, 2014. If you have any questions please call me at (814) 673-1128.

Sincerely,



Peter Rigney  
Project Director

Attachment



**DEPARTMENT OF THE ARMY**  
BUFFALO DISTRICT, CORPS OF ENGINEERS  
1776 NIAGARA STREET  
BUFFALO, NEW YORK 14207-3199

REPLY TO

November 26, 2014

Regulatory Branch

SUBJECT: Application No. 2013-00205, Nationwide Permit No. 39, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012

Mr. William Siderewicz  
Oregon Clean Energy, LLC  
20 Park Plaza, Suite 400  
Boston, Massachusetts 02109

Dear Mr. Siderewicz:

This pertains to Oregon Clean Energy, LLC's application for a Department of the Army permit to place fill material to construct roads, a security fence, outfall structures, and pipelines associated with the construct of a natural gas-fired combined-cycle electric generating facility on an approximately 37.5-acre parcel located east of North Lallendorf Road, in the City of Oregon, Lucas County, Ohio.

The proposed project will result in approximately 60.7 linear feet (LF) of permanent impacts to Driftmeyer Ditch associated with a road crossing and approximately 140.8 LF of temporary impacts associated with stormwater outfalls/overflows and pipelines. In addition, the proposed project will result in approximately 16.4 LF of permanent impacts to Johlin Ditch associated with a road crossing and security fence and approximately 4.7 LF of temporary impacts associated with stormwater outfalls/overflow. All temporarily disturbed areas shall be returned to preconstruction conditions immediately following completion of the authorized work.

I have evaluated the impacts associated with your proposal, and have concluded that they are authorized by the enclosed Nationwide Permit provided that the attached conditions are satisfied.

Verification of the applicability of this Nationwide Permit is valid for two years from the date of this correspondence unless the Nationwide Permit is modified, suspended or revoked, or your activity complies with any subsequent permit modification. Absent any changes to the current Nationwide Permits, reverification of the applicability of your project under the Nationwide Permit is not required if work is completed prior to March 19, 2017.

It is your responsibility to remain informed of changes to the NWP program. A public

Regulatory Branch

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notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil>. Finally, note that if your activity is not undertaken within the defined period or the project specifications have changed, you must immediately notify this office to determine the need for further approval or reverification.

This affirmation is limited to the attached Nationwide Permit and associated Water Quality Certification, and does not obviate the need to obtain any other project specific Federal, state, or local authorization.

In addition to the general conditions attached to the Nationwide Permit, your attention is directed to the following Special Conditions:

- 1 That you are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.
- 2 All water in Driftmeyer and Johlin Ditches must be immediately returned to the downstream portion of the project area so that sufficient flow of water is maintained at all times to sustain aquatic life downstream. Water must be diffused at the pump outlet. All temporary diffusing material must be removed upon completion of the project.
- 3 All temporarily disturbed areas shall be returned to preconstruction conditions immediately following completion of the authorized work.
- 4 To reduce any potential adverse effects on the Federally endangered Indiana bat (*Myotis sodalis*), trees (woody stems greater than 5 inches Diameter at Breast Height and greater than 10 feet tall) must not be cut between April 1 and September 30, of any year.
- 5 The proposed project lies within the range of the Kirtland's warbler (*Setophaga kirtlandii*), a federally-listed Endangered species under the Endangered Species Act. To avoid and minimize any potential adverse effects to the warbler, the clearing, removal, and/or modification of any scrub/shrub or forested habitat shall not occur between April 22nd to June 1st and August 15th to October 15th of any year. The permittee is responsible for ensuring all contractors executing any shrub or tree clearing activities are aware of these work restriction timeframes required to avoid and minimize effects to the warbler.
- 6 Disturbance to the streams shall be limited to those areas shown on the attached project plans.

Regulatory Branch

SUBJECT: Application No. 2013-00205, Nationwide Permit No. 39, as Published in the Federal Register, Volume 77, No. 34, on Tuesday, February 21, 2012

- 7 The disposal of trees, brush, construction debris, and other debris in any stream corridor, wetland or surface water is prohibited.
- 8 Immediately following construction you shall seed or mulch all exposed banks and slopes to prevent erosion.

In addition, I have evaluated your submitted wetland delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. Please note that this is a Preliminary Jurisdictional Determination (JD). Preliminary JDs are non-binding written indications that there may be waters of the United States on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 08-02, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters on the site are regulated by the Corps. Further, all waters, including wetlands will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on the submitted drawings, you may request an approved jurisdictional determination from this office. If an approved jurisdictional determination is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the Preliminary JD Form with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please sign and return a copy of this form to my attention so that I may complete my evaluation of your file. If you do not respond within fifteen days of this letter, I will assume you no longer wish to pursue the jurisdictional determination and will withdraw your application.

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of waters of the United States be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, this determination has been conducted only to identify the limits of waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food

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Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

A copy of this letter has been sent to Ms. Lynn Gresock (Tetra Tech, Inc.), the Ohio Environmental Protection Agency, and to the Ohio Department of Natural Resources.

Questions pertaining to this matter should be directed to me at (716) 879-4339, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: [keith.c.sendziak@usace.army.mil](mailto:keith.c.sendziak@usace.army.mil)

Sincerely,



Keith C. Sendziak  
Biologist

Enclosures

## COMPLIANCE CERTIFICATION

General Condition 30 of the Nationwide Permit you were affirmed requires that:

*"Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include: a) A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions; b) A statement that any required mitigation was completed in accordance with the permit conditions; c) The signature of the permittee certifying the completion of the work and mitigation."*

APPLICANT:  
Oregon Clean Energy, LLC  
20 Park Plaza, Suite 400  
Boston, Massachusetts 02109

POINT of CONTACT:  
Mr. William Siderewicz  
(same)

File Number: 2103-00205  
File Closed: November 26,  
2014  
NWP No.: 39

Upon completion of the activity authorized by this permit sign this certification and return it to the address listed below within **30-days** of project completion.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

\_\_\_\_\_  
Mr. William Siderewicz

\_\_\_\_\_  
Date

Permittee Telephone Number: \_\_\_\_\_

Project Location: approximately 37.5-acre parcel located east of North Lallendorf Road, in the City of Oregon, Lucas County, Ohio.

Project Description: to place fill material to construct roads, a security fence, outfall structures, and pipelines associated with the construct of a natural gas-fired combined-cycle electric generating facility

Authorized Impacts (Waters of U.S. Impacted by Project): Permanent and temporary impacts to Driftmeyer and Johlin Ditches.

Waterway and/or Project Setting: Driftmeyer and Johlin Ditches

Return Completed form to:

**Mr. David Leput  
Regulatory Branch  
U.S. Army Corps of Engineers  
1776 Niagara Street  
Buffalo, New York 14207**

**ATTACHMENT**

**PRELIMINARY JURISDICTIONAL DETERMINATION FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): November 26, 2014**

**B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:**

Mr. William Siderewicz  
Oregon Clean Energy, LLC  
20 Park Plaza, Suite 400  
Boston, Massachusetts 02109

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District,  
Oregon Clean Energy, LLC, DA No. 2013-00205**

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:  
(USE THE ATTACHED TABLE TO DOCUMENT MULTIPLE WATERBODIES  
AT DIFFERENT SITES)**

State: Ohio County/parish/borough: Lucas City: Oregon  
Center coordinates of site (lat/long in degree decimal format): Lat. 41.66743°  
N, Long. -83.44314° W.

Universal Transverse Mercator:

Name of nearest waterbody: Lake Erie

Identify (estimate) amount of waters in the review area:

Non-wetland waters: 1154 linear feet: 8-9 width (ft) and/or acres.

Cowardin Class: Riverine

Stream Flow: Perennial

Wetlands: acres.

Cowardin Class:

Name of any water bodies on the site that have been identified as Section 10  
waters: Not Applicable

Tidal:

Non-Tidal:

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT  
APPLY):**

☒ Office (Desk) Determination. Date: November 26, 2014

☐ Field Determination. Date(s):



1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable. This preliminary JD finds that there "*may be*" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply**

- checked items should be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Tetra Tech, Inc.

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.

☒ Office concurs with data sheets/delineation report.

☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps: .

☐ Corps navigable waters' study: .

☐ U.S. Geological Survey Hydrologic Atlas: .

☐ USGS NHD data.

☐ USGS 8 and 12 digit HUC maps.

☐ U.S. Geological Survey map(s). Cite scale & quad name: .

☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .

☐ National wetlands inventory map(s). Cite name: .

☐ State/Local wetland inventory map(s): .

☐ FEMA/FIRM maps: .

☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)

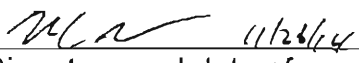
☐ Photographs: ☐ Aerial (Name & Date): .

or ☐ Other (Name & Date): .

☐ Previous determination(s). File no. and date of response letter: .

☐ Other information (please specify): .

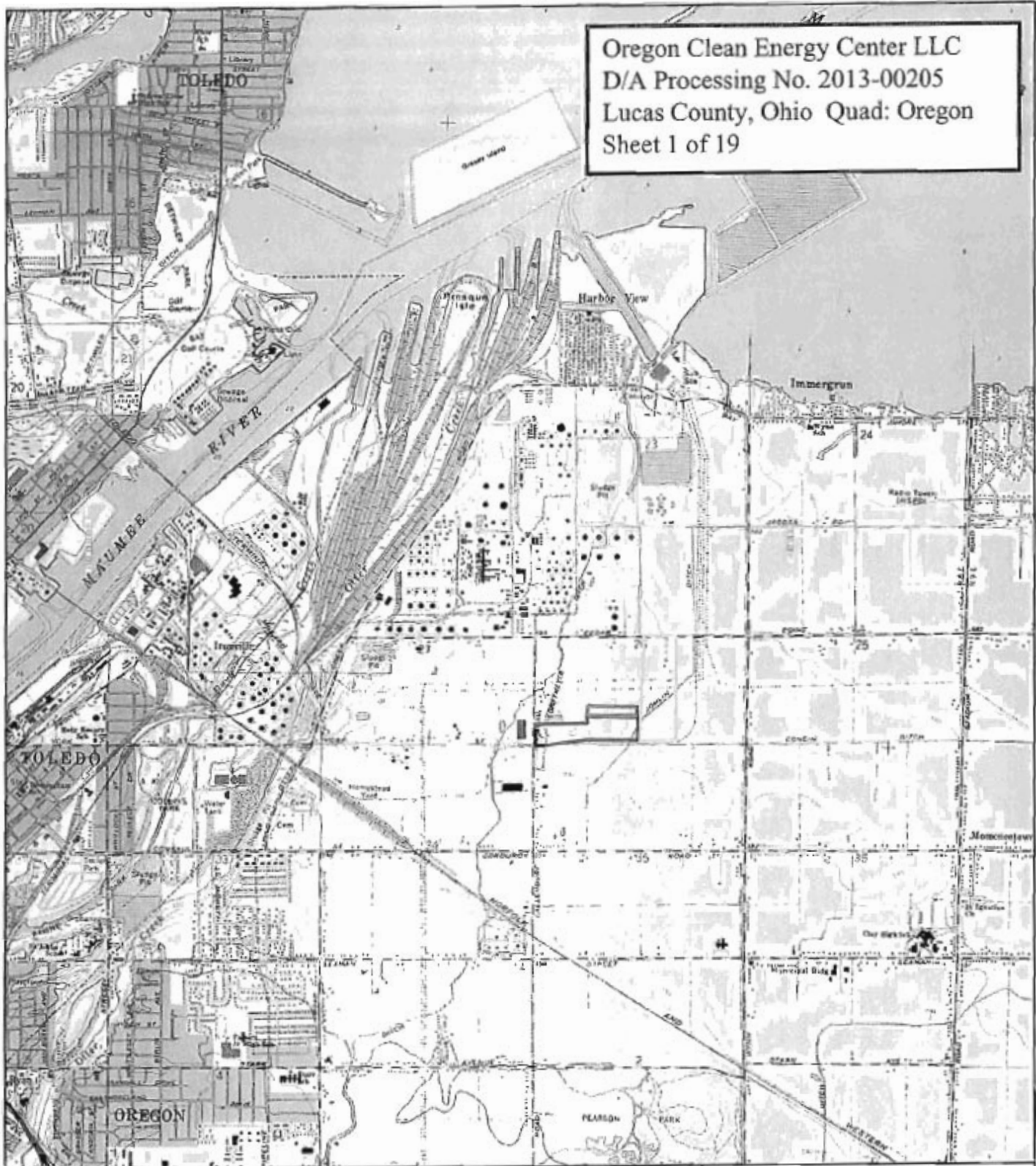
**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

  
\_\_\_\_\_  
Signature and date of  
Regulatory Project Manager  
(REQUIRED)

\_\_\_\_\_  
Signature and date of  
person requesting preliminary JD  
(REQUIRED, unless obtaining  
the signature is impracticable)

<b>Site number</b>	<b>Cowardin Class</b>	<b>Estimated amount of aquatic resource in review area</b>	<b>Class of aquatic resource</b>
Johlin Ditch	Riverine - Perennial	622 linear feet	Non-section 10 -non-wetland
Driftmeyer Ditch	Riverine - Perennial	532 linear feet	Non-section 10 -non-wetland

Oregon Clean Energy Center LLC  
D/A Processing No. 2013-00205  
Lucas County, Ohio Quad: Oregon  
Sheet 1 of 19



**Legend**

- Project Site
- Temporary Construction Laydown
- Switchyard Parcel

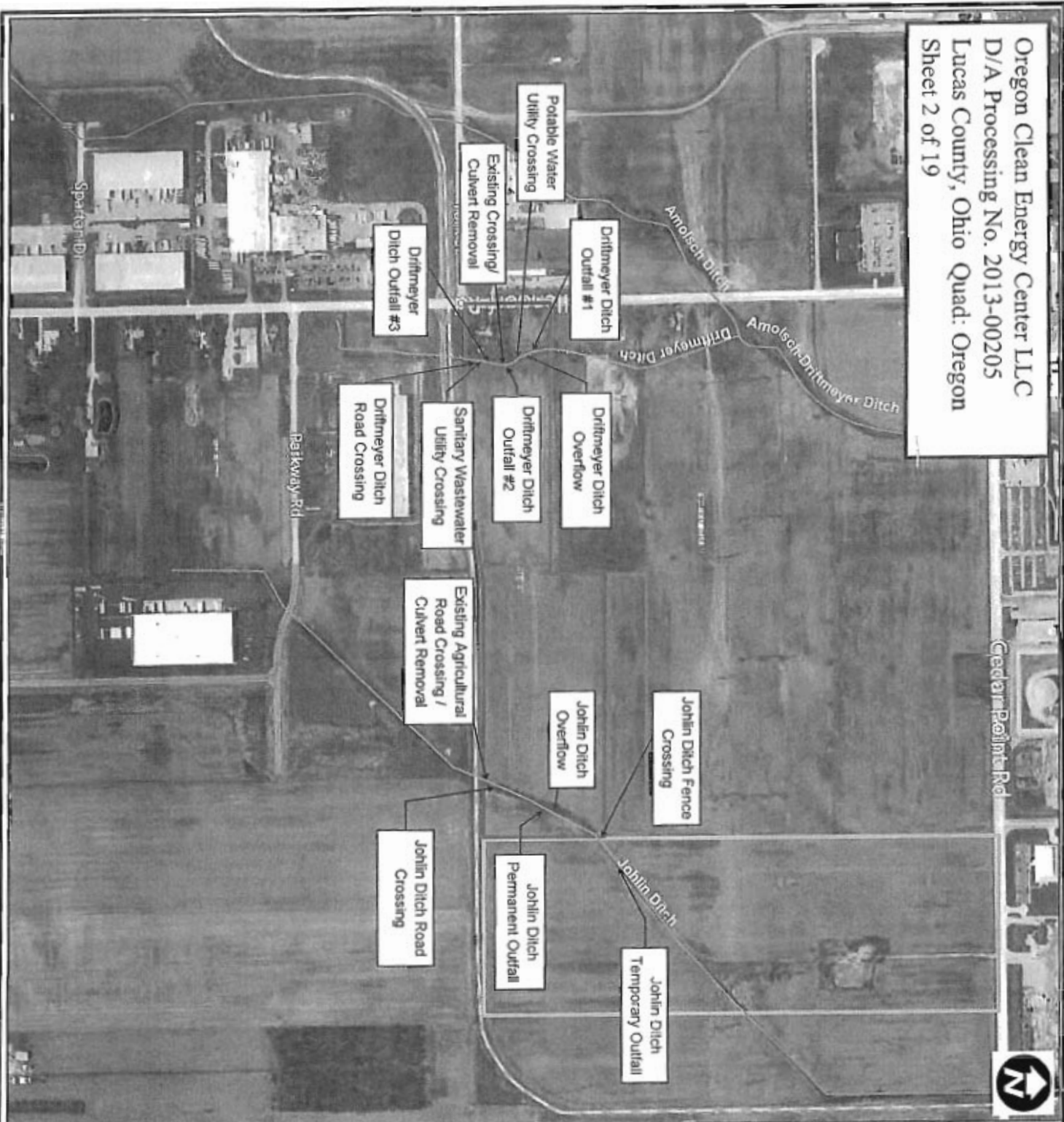
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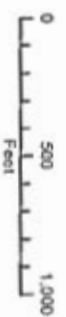
**Oregon Clean Energy, LLC**  
*Natural Gas Energy for Ohio's Future*

**Figure 2  
Vicinity Map**

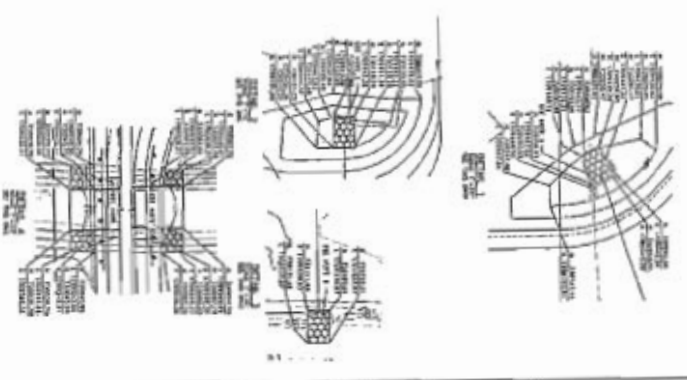
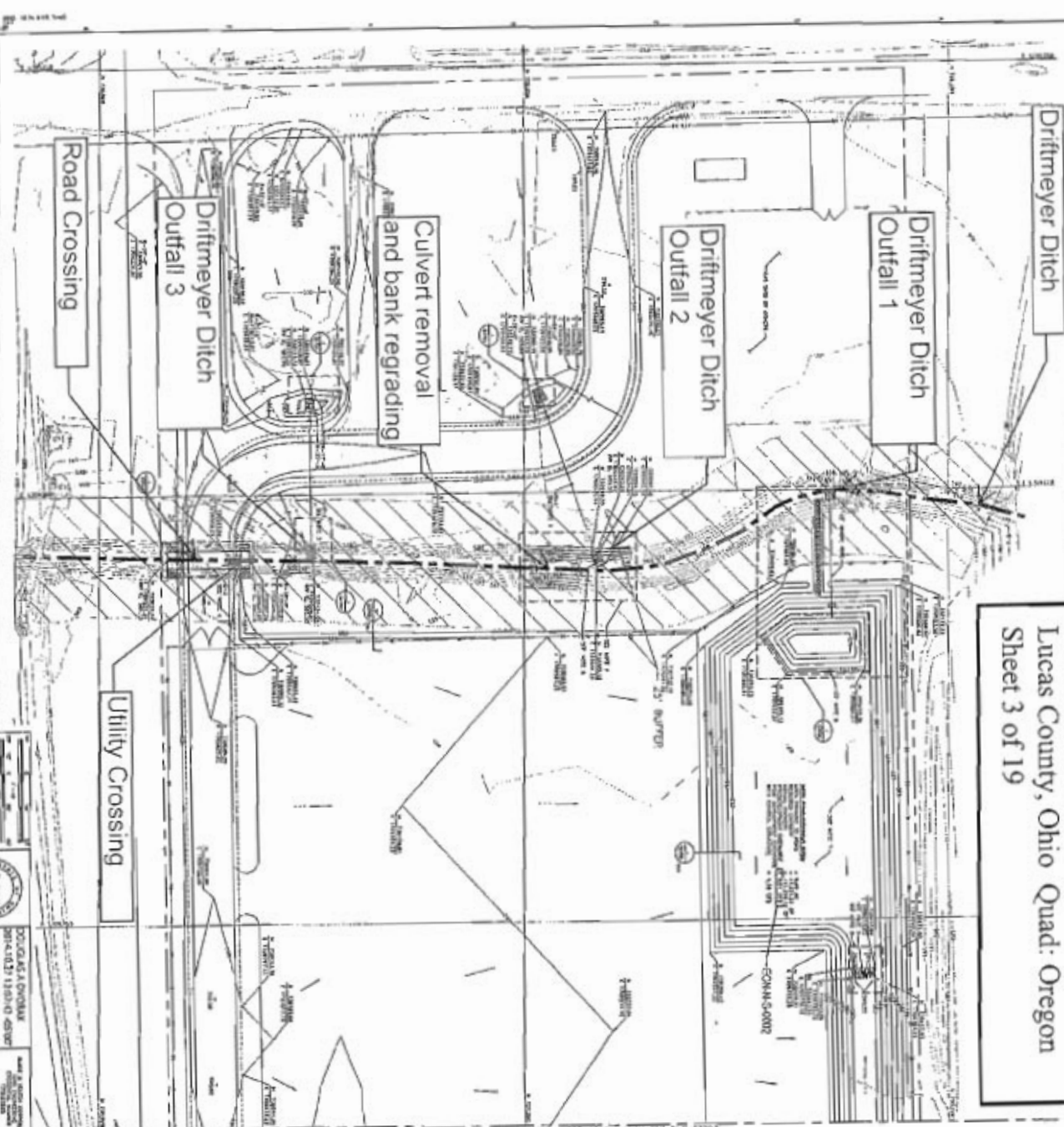
Oregon Clean Energy Center  
Lucas County, Ohio



- Legend**
- Facility Site
  - Temporary Construction Laydown
  - Switchyard Parcel



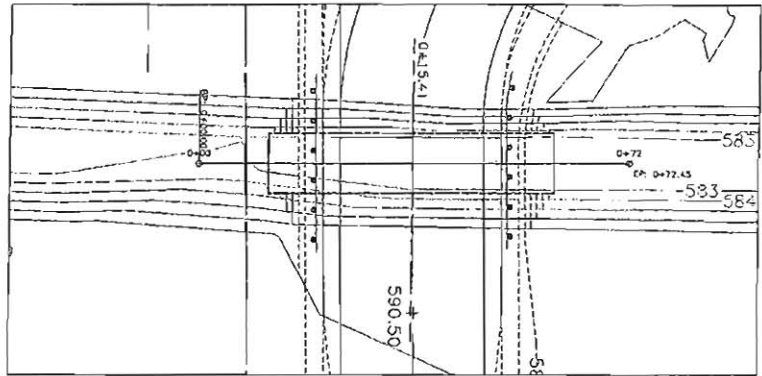
Oregon Clean Energy Center LLC  
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 Lucas County, Ohio Quad: Oregon  
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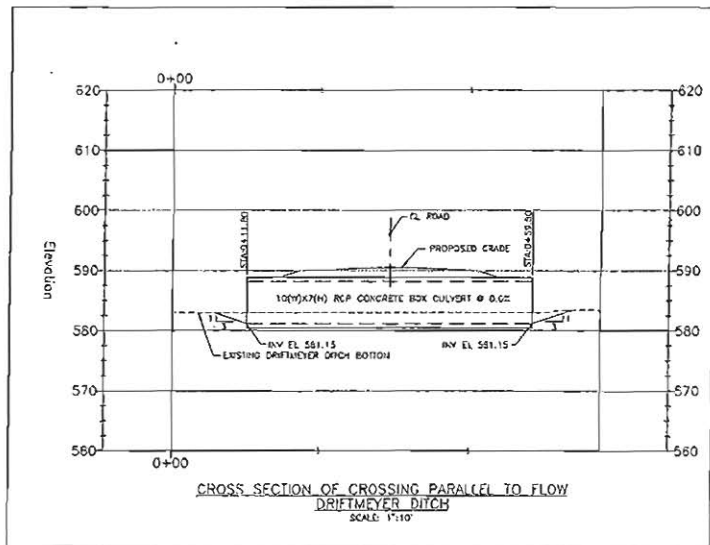
<p>DOUGLAS A. DOWD</p> <p>REGISTERED PROFESSIONAL ENGINEER</p> <p>NO. 10437</p> <p>STATE OF OHIO</p>	<p>DATE: 10/1/13</p> <p>PROJECT: OREGON CLEAN ENERGY CENTER LLC</p> <p>SHEET: 3 OF 19</p>
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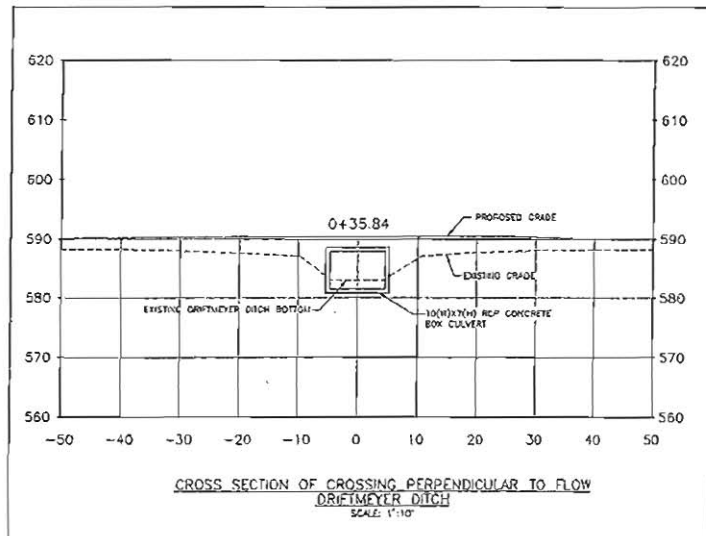




PLAN VIEW OF ROAD CROSSING  
DRIFTMEYER DITCH  
SCALE: 1"=10'

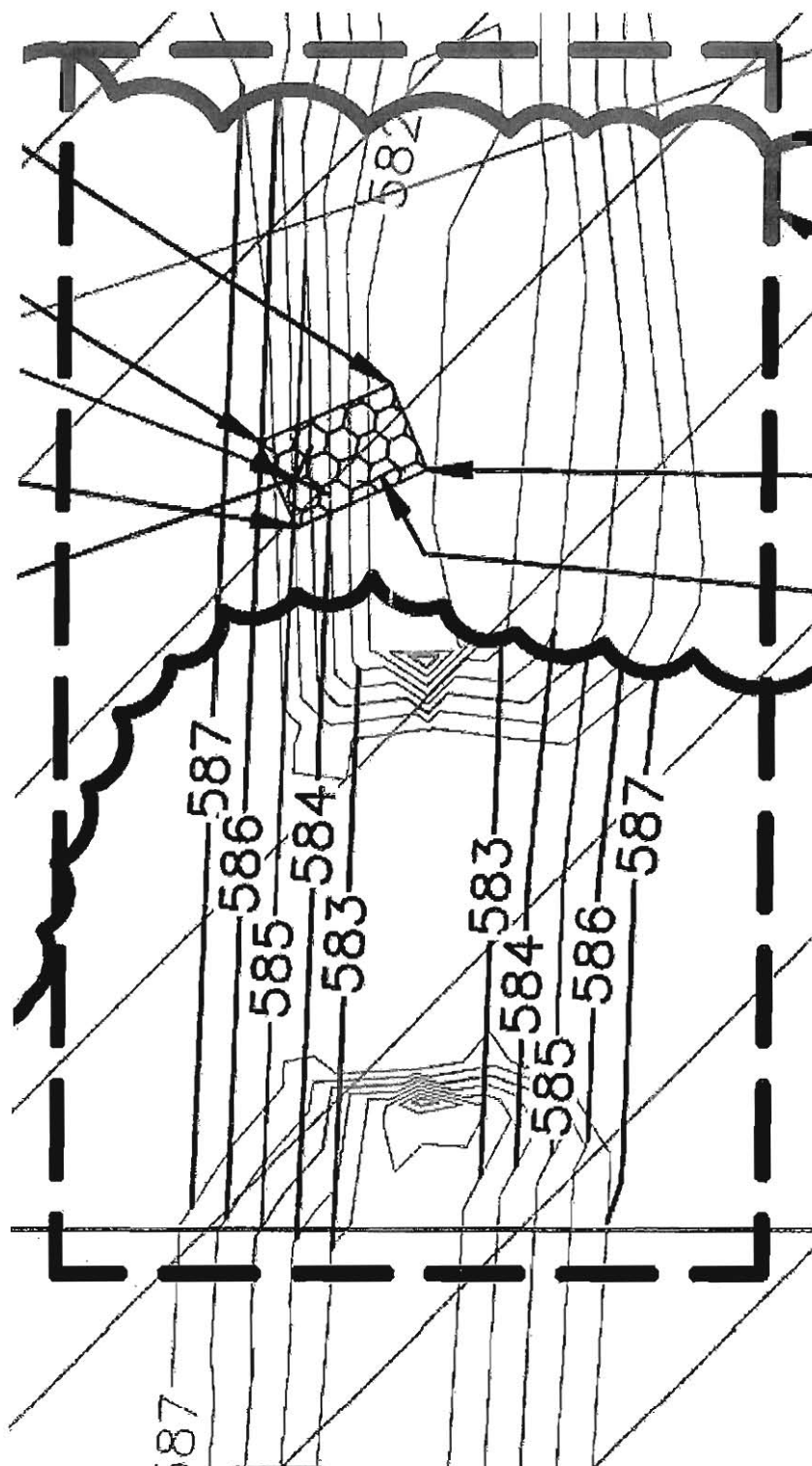


CROSS SECTION OF CROSSING PARALLEL TO FLOW  
DRIFTMEYER DITCH  
SCALE: 1"=10'

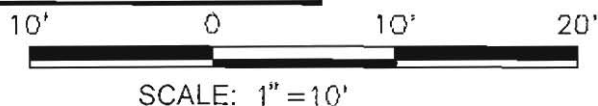


CROSS SECTION OF CROSSING PERPENDICULAR TO FLOW  
DRIFTMEYER DITCH  
SCALE: 1"=10'



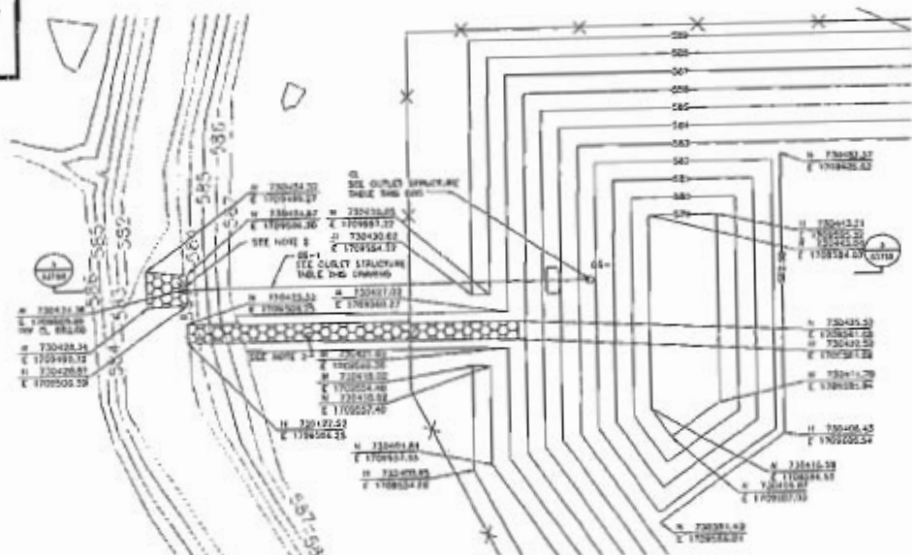


Oregon Clean Energy Center LLC  
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 Lucas County, Ohio Quad: Oregon  
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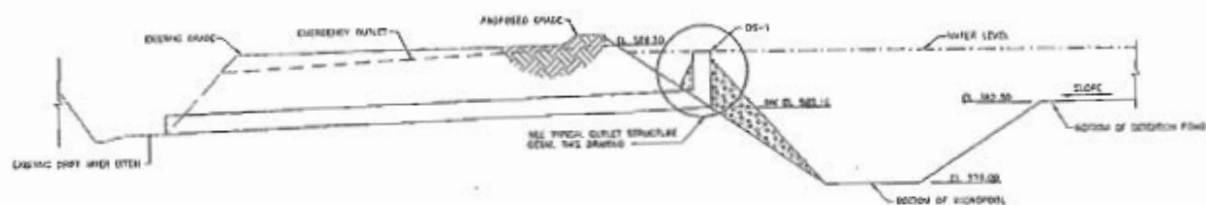


**Figure 4**  
**Driftmeyer Ditch Culvert**  
**Removal and Regrading Plan**

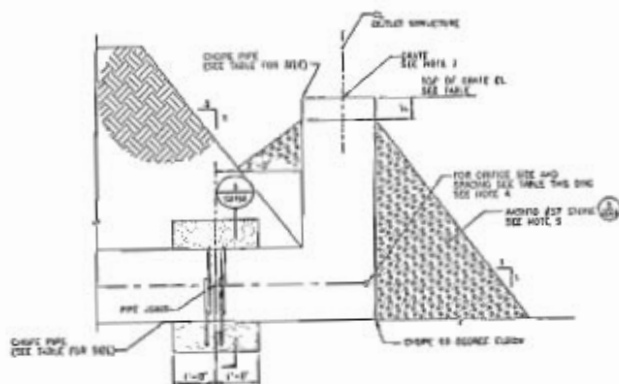
Oregon Clean Energy Center  
 Lucas County, Ohio



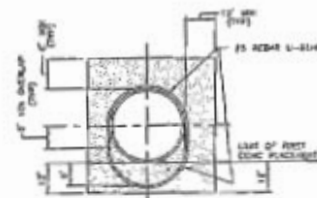
DETAIL 1  
WEST POND  
SCALE 1"=10'  
SEE PLAN 147C-527A



SECTION 3  
NO. 1242  
24 JAN 1964

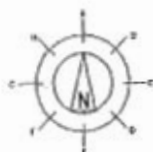


TYPICAL OUTLET STRUCTURE DETAIL

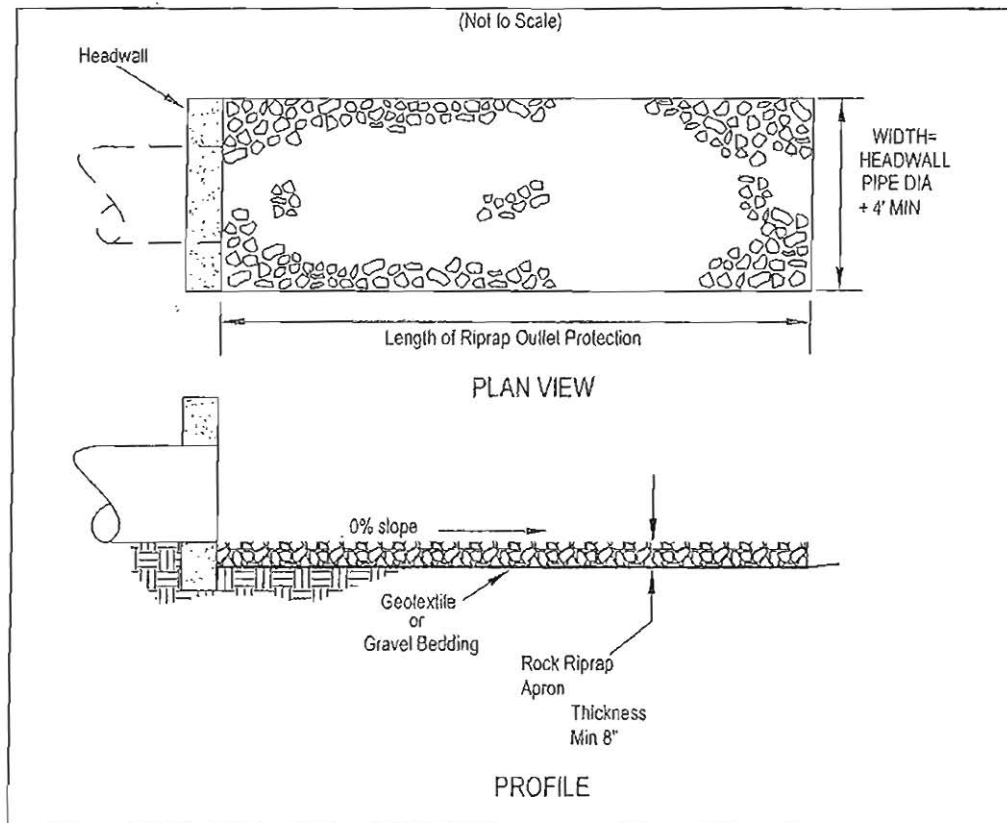


SECTION 5  
NO SCALE  
SEE TAB 0.00

ORIFICE SIZE AND ELEVATION TABLE						
SHAPE/ POUND #	ORIG NO.	STRUCTURE ID	ORIFICE SIZE	ORIFICE CENTERLINE ELEVATION	QUANTITY	REMARKS
1	5390	05-1	3.4" OA	582.50	1	SEE NOTE 4
1	5390	06-2	3.3" OA	582.25	1	SEE NOTE 4

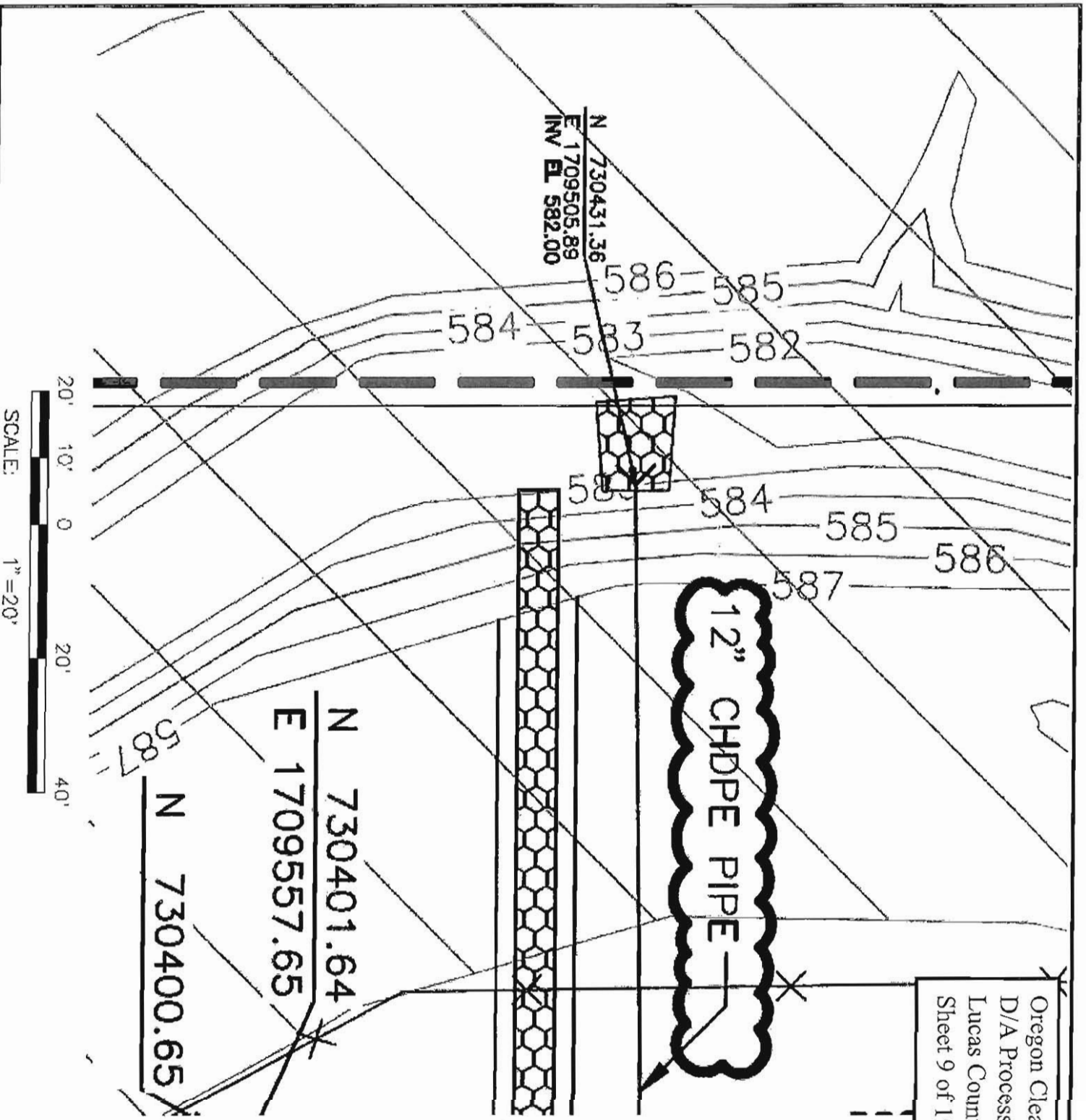
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Specifications  
for  
**Rock Outlet Protection**



1. Subgrade for the filter or bedding and riprap shall be prepared to the required lines and grades as shown on the plan. The subgrade shall be cleared of all trees, stumps, roots, sod, loose rock, or other material.
2. Riprap shall conform to the grading limits as shown on the plan.
3. Geotextile shall be securely anchored according to manufacturers' recommendations.
4. Geotextile shall be laid with the long dimension parallel to the direction of flow and shall be laid loosely but without wrinkles and creases. Where joints are necessary, strips shall be placed to provide a 12-in. minimum overlap, with the upstream strip overlapping the downstream strip.
5. Gravel bedding shall be ODOT No. 67's or 57's unless shown differently on the drawings.
6. Riprap may be placed by equipment but shall be placed in a manner to prevent slippage or damage to the geotextile.
7. Riprap shall be placed by a method that does not cause segregation of sizes. Extensive pushing with a dozer causes segregation and shall be avoided by delivering riprap near its final location within the channel.
8. Construction shall be sequenced so that outlet protection is placed and functional when the storm drain, culvert, or open channel above it becomes operational.
9. All disturbed areas will be vegetated as soon as practical.

Oregon Clean Energy Center LLC  
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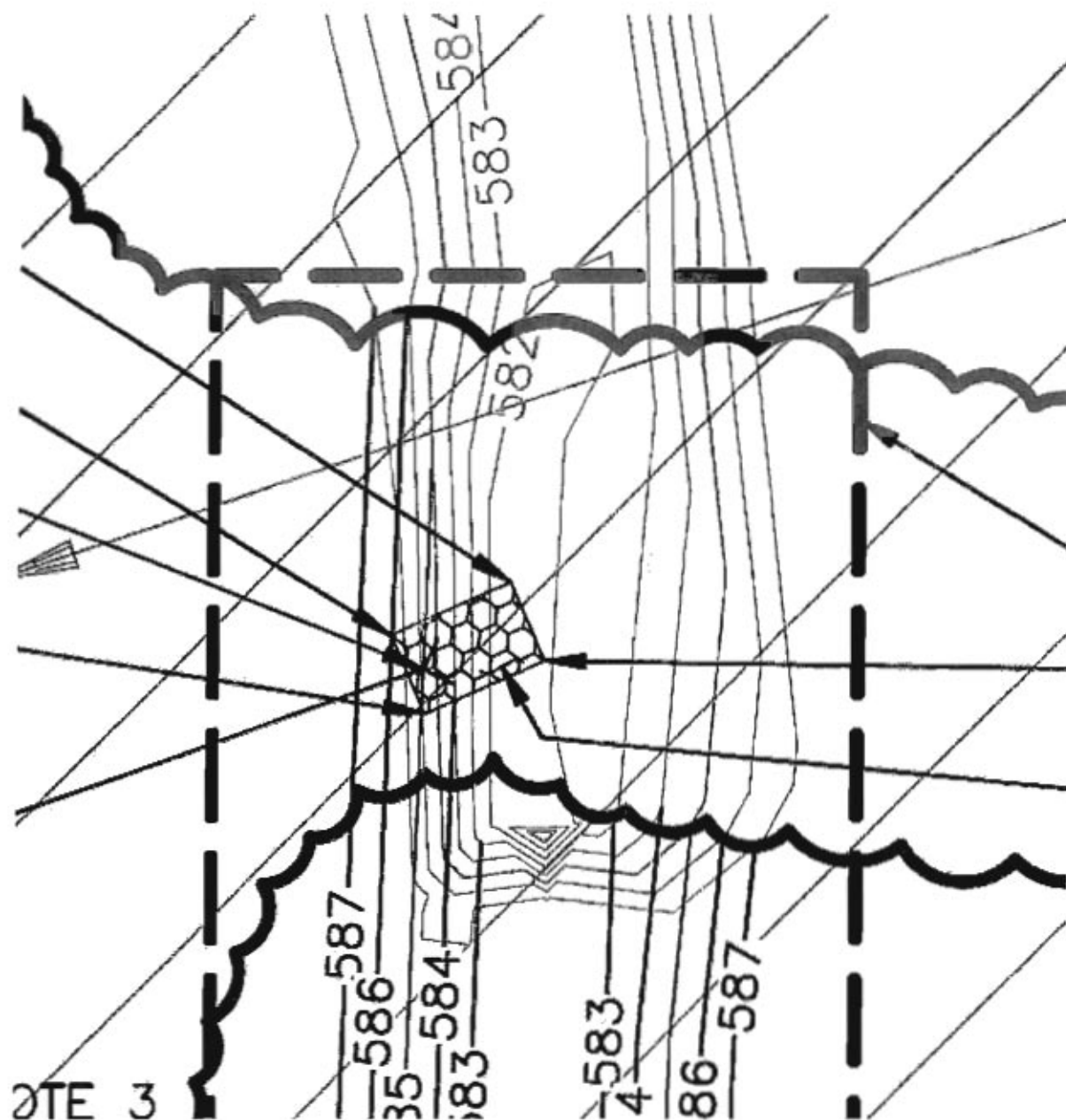


Oregon Clean Energy, LLC  
*Natural Gas Energy for Ohio's Future*

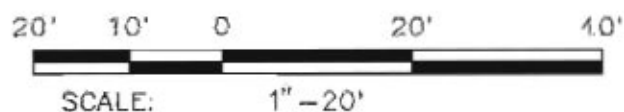
Figure 7

Driftmeyer Ditch Outfall #1  
and Stormwater Overflow

Oregon Clean Energy Center  
Lucas County, Ohio



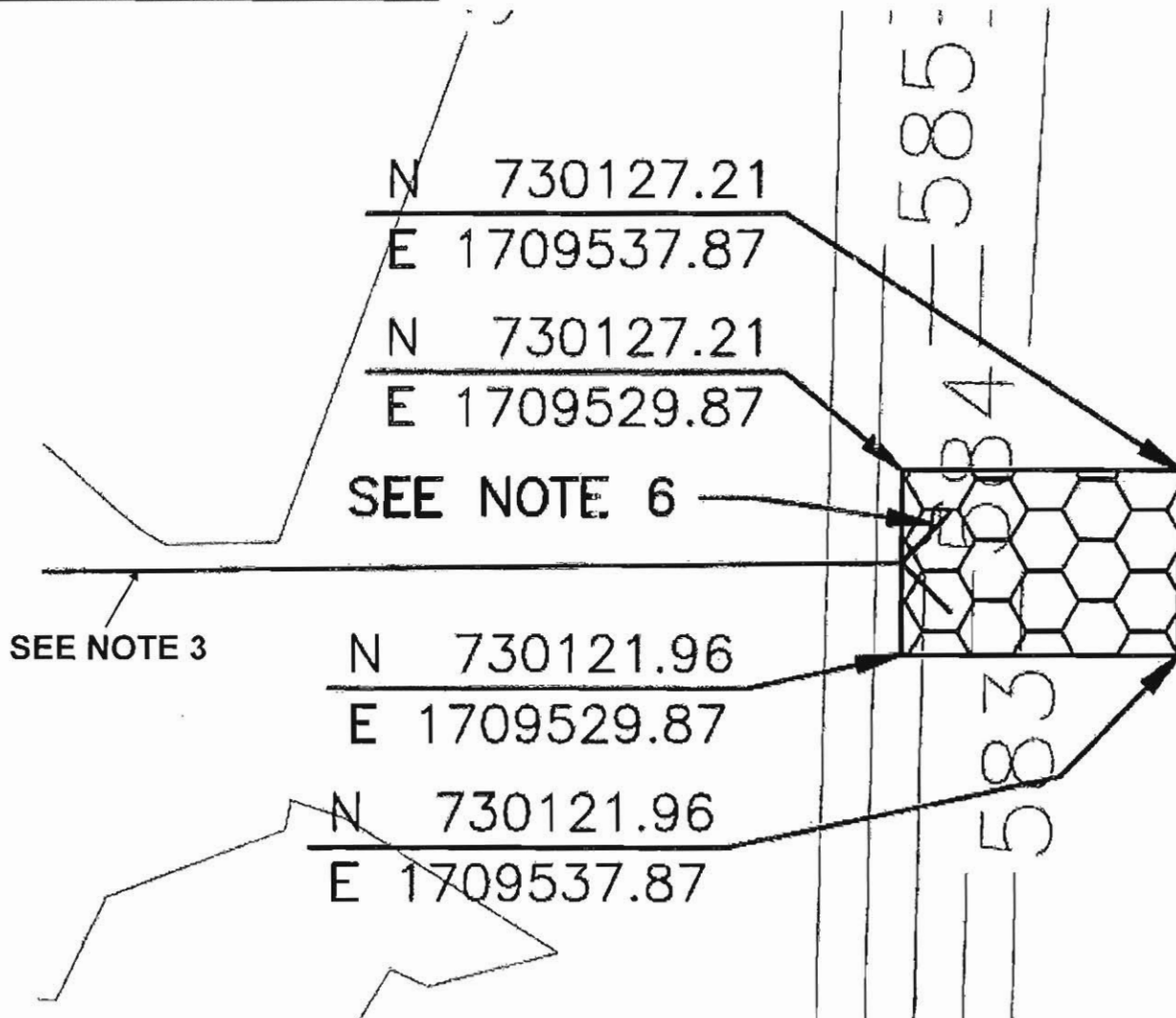
Oregon Clean Energy Center LLC  
D/A Processing No. 2013-00205  
Lucas County, Ohio Quad: Oregon  
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 Oregon Clean Energy, LLC  
Natural Gas Energy for Ohio's Future

**Figure 8**  
**Driftmeyer Ditch Outfall #2**

Oregon Clean Energy Center  
Lucas County, Ohio



SCALE: 1" = 10'

**NOTES**

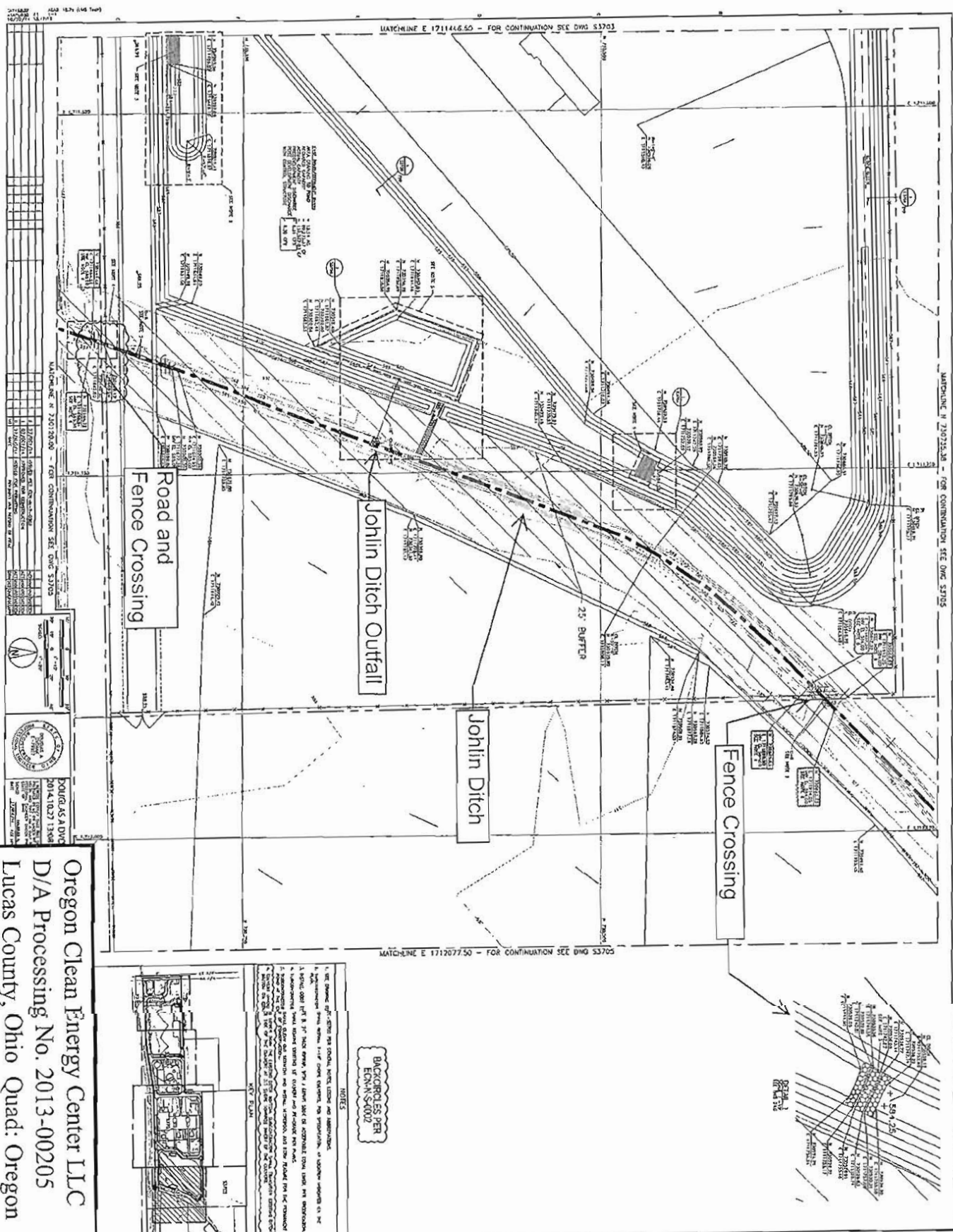
3: SUBCONTRACTOR SHALL INSTALL 15" CHDPE CULVERT, PER SPECIFICATION, AT LOCATION IDENTIFIED ON THE PLAN.

6: INSTALL ODOT TYPE B, 18" THICK RIPRAP WITH A MIRAFI 500X OR ACCEPTABLE EQUAL LINER, PER SPECIFICATION.



**Figure 9**  
**Driftmeyer Ditch Outfall #3**

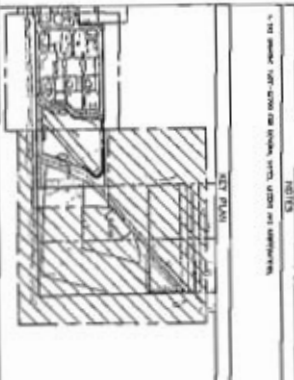
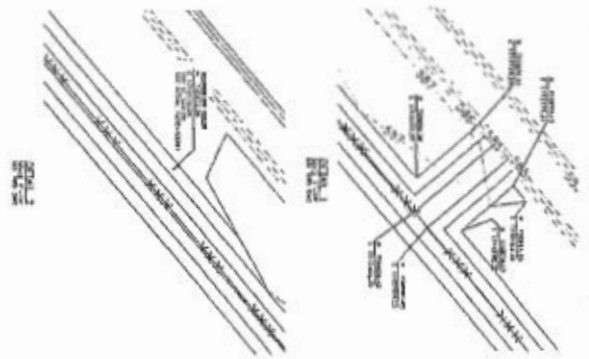
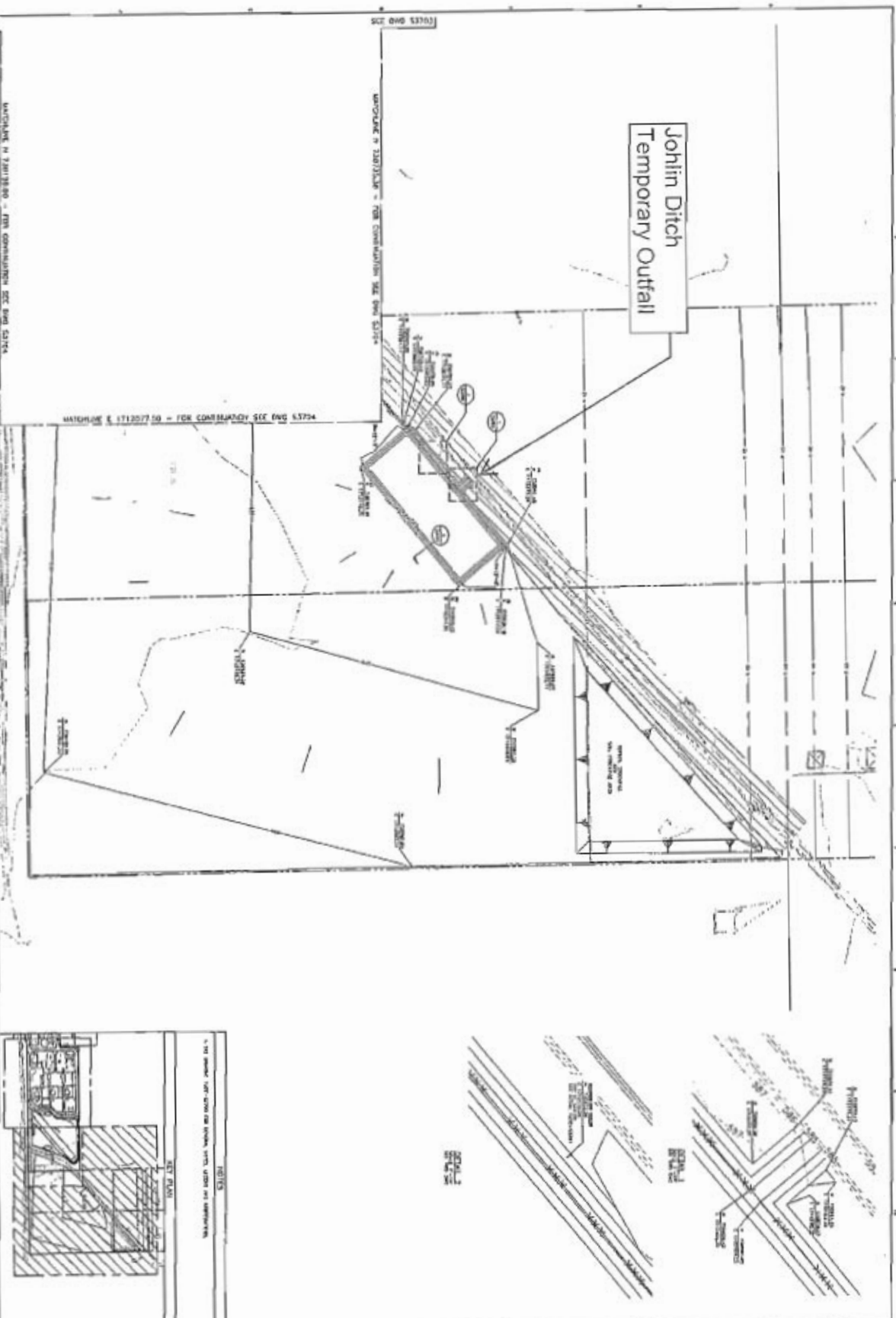
Oregon Clean Energy Center  
Lucas County, Ohio



Oregon Clean Energy Center LLC  
D/A Processing No. 2013-00205  
Lucas County, Ohio Quad: Oregon  
Sheet 12 of 19



Johlin Ditch  
Temporary Outfall



DATE	DESCRIPTION	BY	CHECKED
01/11/13	ISSUED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
02/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
03/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
04/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
05/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
06/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
07/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
08/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
09/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
10/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
11/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS
12/11/13	REVISED FOR PERMIT	J. L. LUCAS	J. L. LUCAS

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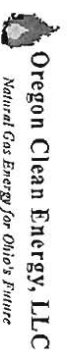
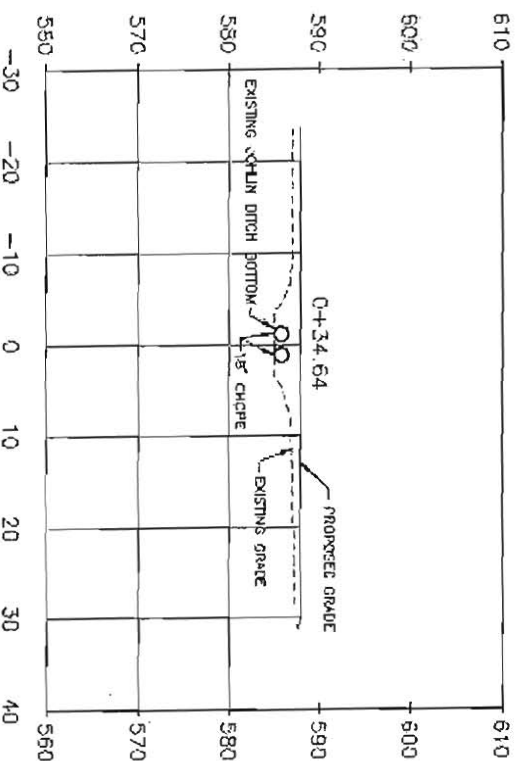
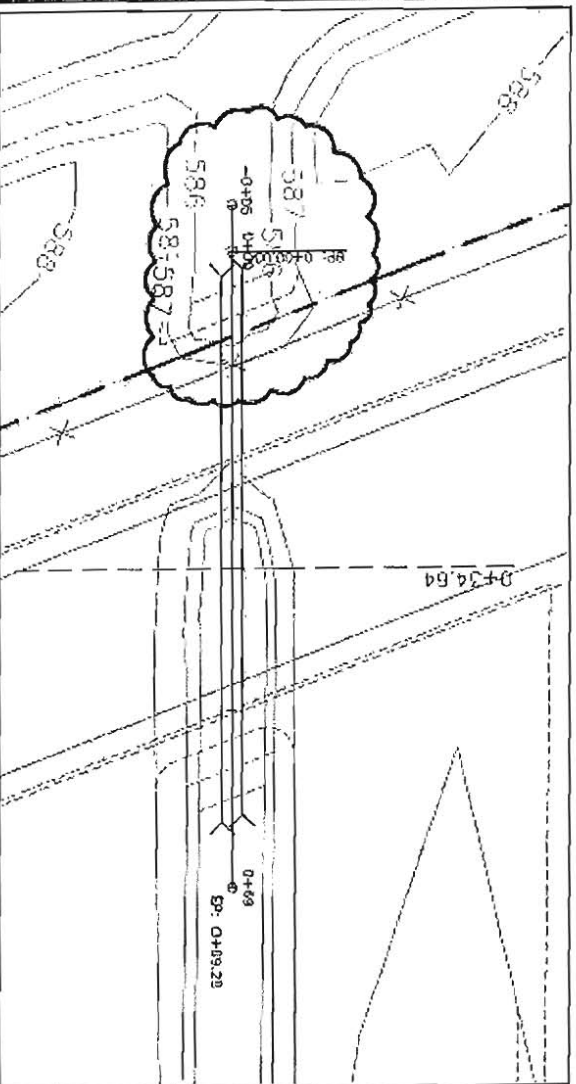
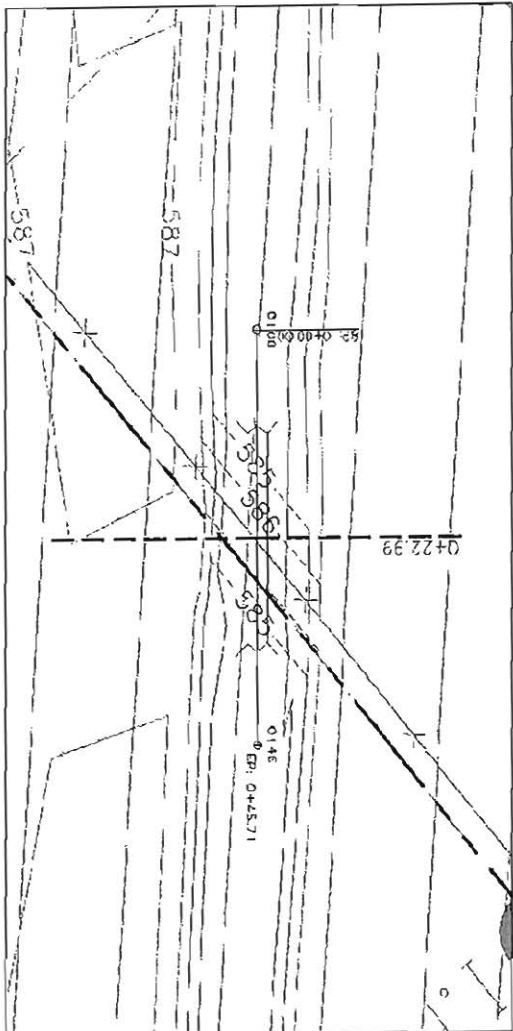


Figure 5  
Johlin Ditch Road Crossing and  
Culvert Removal

Oregon Clean Energy Center  
Lucas County, Ohio



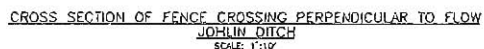
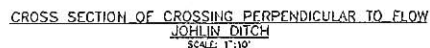
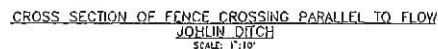
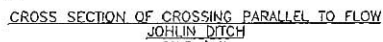




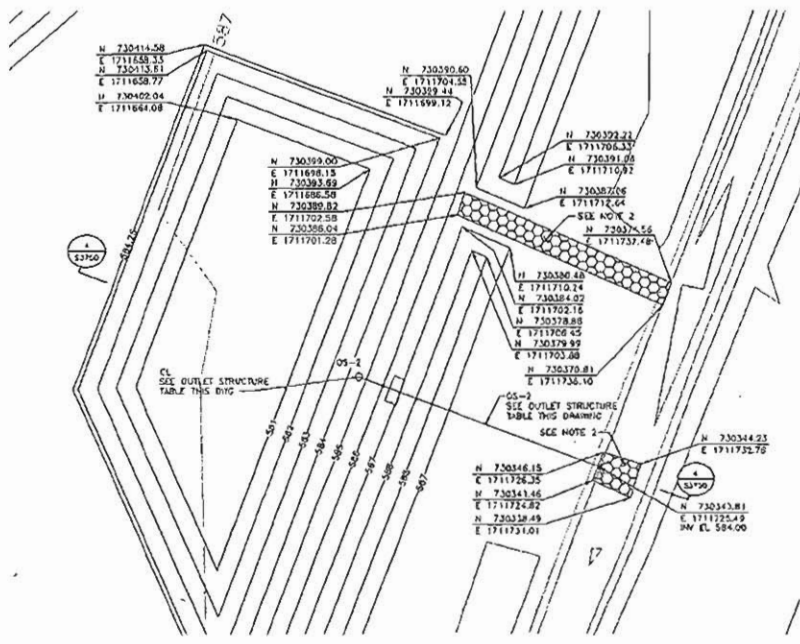
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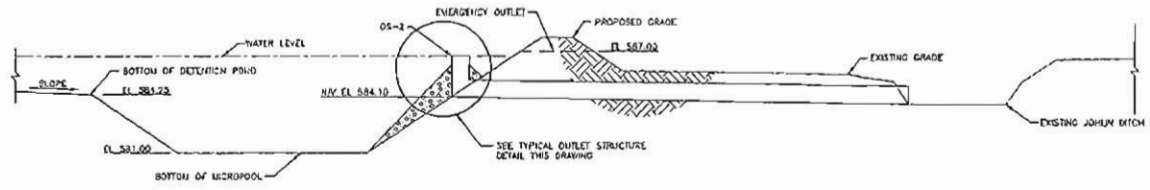
JOHN D.  
1911-1912



Oregon Clean Energy Center LLC  
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Lucas County, Ohio Quad: Oregon  
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DETAIL 2  
EAST POND  
SCALE 1"=10'  
SEE DWG 102C-S3704

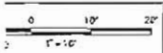


SECTION 4  
NO SCALE  
SEE THIS DWG

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Lucas County, Ohio Quad: Oregon  
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G	DIA	INV EL	H	DIA	REMARKS
24"	12"	-	-	-	• INV EL IS TOP OF STANDPIPE
-	-	-	-	-	• INV EL IS TOP OF STANDPIPE

BACKCIRCLES PER  
ECN-N-S-0001



DOUGLAS A DVORAK  
2014.10.07 14:38:13 -05'00'

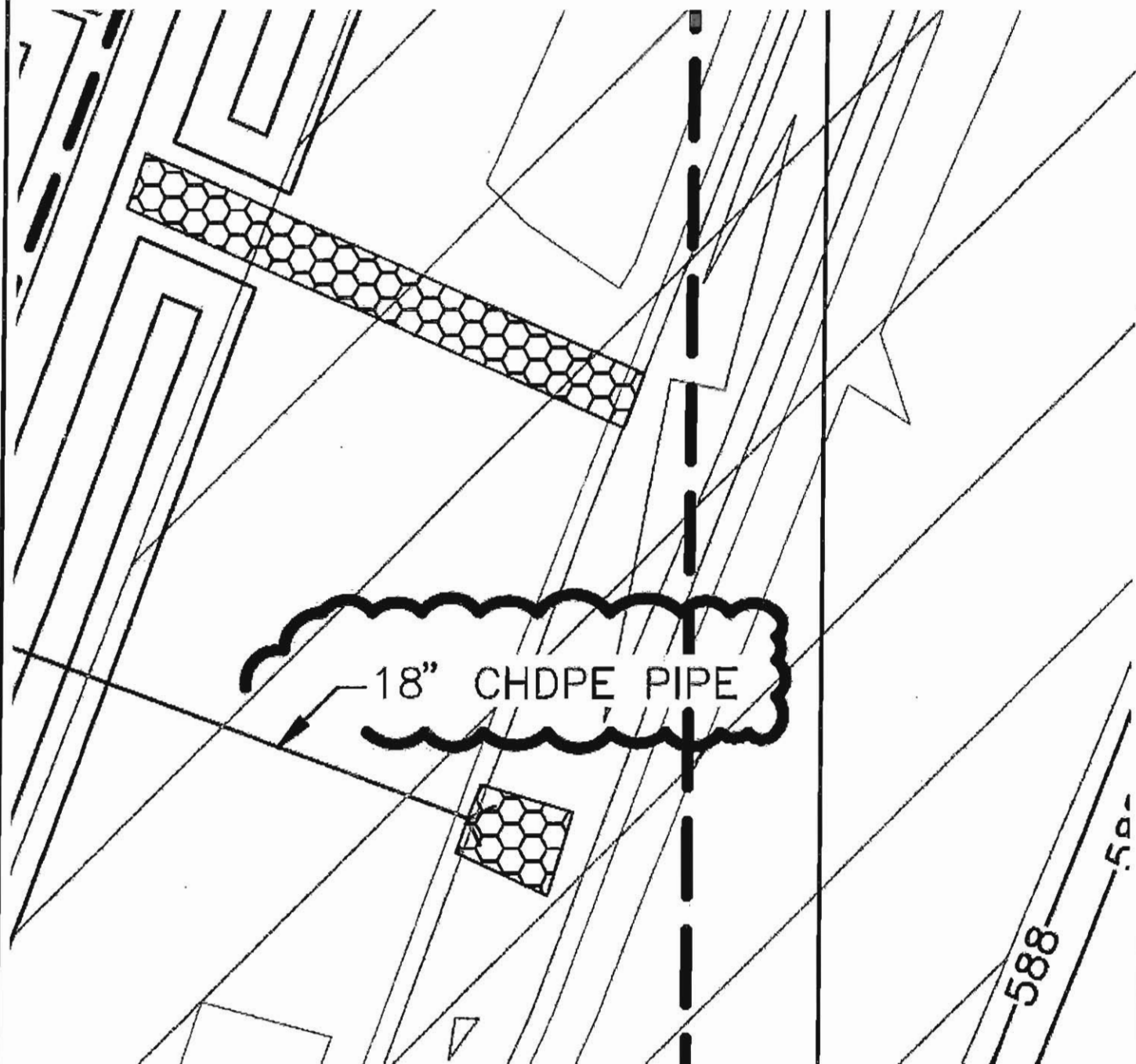
BLACK & VEATCH CORPORATION  
OHIO ENGINEERING  
CREDENTIAL NUMBER  
FRV.01645

NOTES

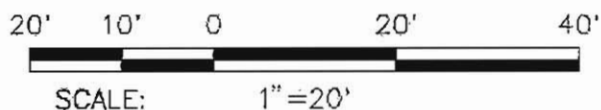
- SEE DRAWING 102C-S3700 FOR GENERAL NOTES, LEGEND AND ABREVIATIONS.
- INSTALL ODOT TYPE B, 24" THICK REPAIR, WITH A MOUNT SOOK OR ACCEPTABLE EQUAL LINER, PER SPECIFICATION.
- CRATE SHALL BE MINIMUM 12" DROP-IN CRATE OR EQUIVALENT FOR OS-1 AND OS-2.
- ORFICE SHALL BE FIELD DRILLED ONLY AFTER TEMPORARY SKIMMER DEWATERING DEVICE IS REMOVED AND PLUGGED. SUBCONTRACTOR SHALL WRAP PIPE AROUND THE ORFICE WITH A MINIMUM 140# OR ACCEPTABLE EQUAL LUGOR LUGOR SHALL BE SECURED TO THE PIPE AND HAVE A SIX INCH VERTICAL HATCH ABOVE AND BELOW THE ORFICE.
- SUBCONTRACTOR SHALL INSPECT STONE AS SPECIFIED ON DETAIL AFTER THE ORFICE IS FIELD DRILLED. THESE ACTIVITIES SHALL HAPPEN AT THE END OF PROJECT CONSTRUCTION AND THE COMMISSIONING OF THE PERMANENT POND.

APPROVED FOR  
CONSTRUCTION

THE DISTRIBUTION AND USE OF THE NATIVE FORMAT CAD FILE OF THIS DRAWING IS UNCONTROLLED. THE USER SHALL VERIFY TRACEABILITY OF THIS DRAWING TO THE LATEST CONTROLLED VERSION.



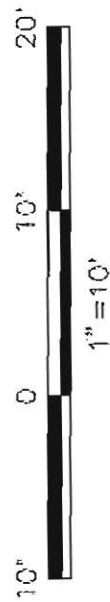
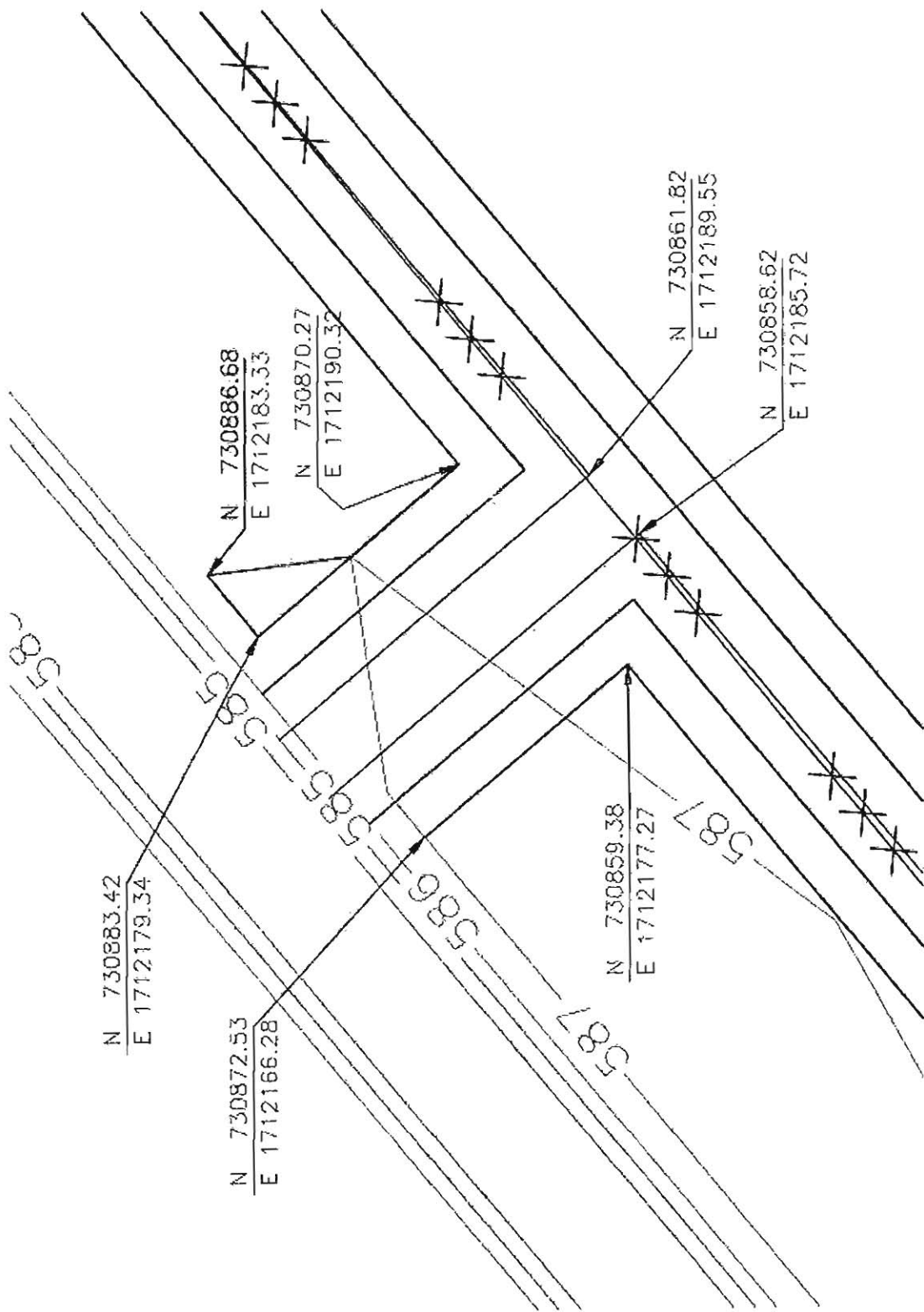
Oregon Clean Energy Center LLC  
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 Oregon Clean Energy, LLC  
*Natural Gas Energy for Ohio's Future*

Figure 10  
Johlin Ditch Permanent Outfall  
and Overflow

Oregon Clean Energy Center  
Lucas County, Ohio



Oregon Clean Energy, LLC

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Lucas County, Ohio

## ACTIVITIES AUTHORIZED BY 2012 NATIONWIDE PERMIT

39. **Commercial and Institutional Developments**. Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses and new ski areas is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 300 linear foot limit by making a written determination concluding that the discharge will result in minimal adverse effects. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

**Notification**: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 31.) (Sections 10 and 404)

**Note**: For any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission line, a copy of the PCN and NWP verification will be provided to the Department of Defense Siting Clearinghouse, which will evaluate potential effects on military activities.

### **Nationwide Permit 39 Specific Regional Conditions:**

- a. The Notification shall include information sufficient to demonstrate the proposed project represents a single and complete project.
- b. Perpetual protection, in the form of a conservation easement, deed restriction, deed-restricted open space, or other similar legal protection, should be placed on the remaining waters of the U.S. on-site to guarantee their preservation for aquatic resources, wildlife, open space, and flood protection. The Notification should include a written description of the perpetual protection and corresponding drawings. When perpetual protection is implemented, the permittee is required to clearly identify, on the plot plan, the boundary of the Federal jurisdictional waters and associated upland buffer that is protected by the easement. The restrictions shall specifically state that the aquatic resources are not to be adversely impacted by incompatible uses. A copy of the recorded easement shall be provided to the Army Corps of Engineers by December 31<sup>st</sup> in the year the authorized work commences, or by an approved time extension.
- c. Wetlands included within compensatory mitigation plans provided in accordance with Nationwide Permit General Condition 23 shall not include lot lines within the wetland areas identified in the compensatory mitigation plan.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

17. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will review the documentation and determine whether it is sufficient to address ESA compliance for the NWP activity, or whether additional ESA consultation is necessary.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification



additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 31, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

**23. Mitigation.** The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provides a project-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in minimal adverse effects on the aquatic environment.

(2) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(3) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(4) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(5) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWPs.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the restoration or establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to establish a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or establishing a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee programs, or separate permittee-responsible mitigation. For activities resulting in the loss of marine or estuarine resources, permittee-responsible compensatory mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

**24. Safety of Impoundment Structures.** To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project;

(3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause, including the anticipated amount of loss of water of the United States expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(4) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(5) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse effects are minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and

(7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States, for NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed, and for all NWP 48 activities that require pre-construction notification, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects to the aquatic environment of the proposed activity are minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

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

## **D. District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to intermittent or ephemeral streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51 or 52, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in minimal adverse effects. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate

3. **Class 3 primary headwater streams** (watershed  $\leq 1$  mi<sup>2</sup>), **EWI, CWH, WWH**, or streams with **T&E species**. Includes **Lake Erie & bays** not listed above. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

**Note:** This condition does not apply to Ohio Department of Transportation projects that are covered under the "Memorandum of Agreement between Ohio Department of Transportation, Federal Highway Administration, Ohio Department of Natural Resources, and United States Fish and Wildlife Service For Interagency Coordination For Highway Projects Which Involve Stream Crossings, Bank Stabilization, and/or Minor Wetland Fills.

**5. Waters of Special Concern:** The applicant must notify the District Engineer in accordance with Nationwide Permit General Condition 31 and Regional General Condition 6 for activities in the following resources:

a. **Category 3 Wetlands:** Notification is required for all temporary or permanent impacts to Category 3 wetlands as determined through use of the latest approved version of Ohio EPA's Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**.

b. **Ohio Stream Designations:**

Notification is required for all temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National Resource Water, or Outstanding State Waters as determined by Ohio EPA except for NWP 1, 2, 3, 9, 10, 11, 27, 28, 32, and 35 or maintenance activities covered under NWPs 7 and 12. The current list of these streams can be found on the Ohio EPA web-site at: [http://www.epa.ohio.gov/dsw/rules/3745\\_1.aspx](http://www.epa.ohio.gov/dsw/rules/3745_1.aspx). You should look for these designations under the aquatic life use of the stream within its basin and under the "Anti-deg Rule #05."

c. **State Wild and Scenic Rivers:** Notification is required for all activities in State Wild and Scenic Rivers. The following are State Wild and Scenic Rivers:

**The Ashtabula River**

- The Ashtabula River from the confluence of the East Branch and West Branch of the Ashtabula River at river mile 27.54, downstream to the East 24th Street bridge crossing at river mile 2.3.
- The East Branch of the Ashtabula River from Pennline Fen at river mile 12.0, downstream to the mouth of the East Branch at river mile 0.0.
- The West Branch of the Ashtabula River from the North Richmond Road (Co. Rd. 302) bridge crossing at river mile 9.05, downstream to the mouth of the West Branch at river mile 0.0.
- Miles designated (approximate): Scenic 46

**Big and Little Darby Creeks**

- Big Darby Creek from the Champaign/Union County line downstream to the U.S. Rt. 40 bridge, from the northern boundary of Battelle-Darby Creek Metro Park to the confluence with the Little Darby Creek downstream to the Scioto River.
- Little Darby Creek from the Lafayette-Plain City Road bridge downstream to the confluence with Big Darby Creek.
- Miles designated (approximate): 84

**Chagrin River**

- Aurora Branch from St. Rt. 82 bridge downstream to confluence with the Chagrin River.
- Chagrin River from confluence with Aurora Branch downstream to U.S. Rt. 6 bridge.
- Chagrin River from Woodiebrook Road bridge crossing downstream to the confluence with Aurora Branch of the Chagrin River in Bentleyville.
- East Branch from Heath Road bridge downstream to confluence with the Chagrin River.
- Miles designated (approximate): Scenic 71

**Conneaut Creek**

- *Scenic Segment:* Creek Road bridge crossing to the Penn Central Railroad bridge crossing at river mile 2.0 in Conneaut.
- *Wild Segment:* Ohio/Pennsylvania border at river mile 23.83 to the Creek Road bridge crossing at river mile 7.39.
- Miles designated (approximate): Scenic 5.39, Wild 16.44, Total 21.83

**Grand River**

- *Wild segment* - from Harpersfield covered bridge downstream to Norfolk and Western Railroad trestle south of Painesville.
- *Scenic segment* - from U.S. Rt. 322 bridge in Ashtabula County downstream to Harpersfield covered bridge.
- Miles designated (approximate): Scenic 33, Wild 23, Total 56

**Kokosing River**

- West Fork from vicinity of Co. Rd. 914 (Y-Camp Road) bridge crossing east to confluence of West Fork with Middle Fork near Williamsport.
- Total designation is 33 miles.

**Little Miami** (National Wild and Scenic River System)

- Little Miami River - St. Rt. 72 at Clifton to the Ohio River
- Caesar Creek: lower two miles of Caesars Creek.
- Total designation is 94 miles.

e. *Endangered Species*: Due to the potential presence of Federally threatened or endangered species or their habitats, Notification is required for all work in the following waterway or township of the corresponding county:

County	Waterway	Township
Adams	Ohio Brush Creek, Ohio River, Scioto Brush Creek, South Fork Scioto Brush Creek, West Fork Ohio Brush Creek	
Allen	Auglaize River, Cranberry Creek, Ottawa River, Riley Creek, Sugar Creek	
Ashtabula	Grand River, Pymatuning Creek	
Athens	Ohio River	
Auglaize	Auglaize River, Pusheta Creek, St. Marys River	
Belmont	Ohio River	
Brown	Eagle Creek, East Fork Eagle Creek, East Fork Little Miami River, East Fork Whiteoak Creek, Ohio River, Straight Creek, West Fork Eagle Creek, Whiteoak Creek	
Butler	Dicks Creek, Dry Fork Whitewater River, Elk Creek, Four Mile Creek, Great Miami River, Indian Creek, Sevenmile Creek	
Champaign	Chapman Creek, Kings Creek, Mad River, Nettle Creek	
Clark	Beaver Creek, Chapman Creek, Honey Creek, Little Miami River, Mad River, Mud Run	Bethel
Clermont	East Fork Little Miami River, Indian Creek, Little Miami River, O'Bannon Creek, Ohio River, Stonelick Creek	
Clinton	Anderson Fork, Cowan Creek, Little East Fork, Rattlesnake Creek, Todd Fork Little Miami River	
Columbiana	Ohio River	
Coshocton	Doughty Creek, Killbuck Creek, Kokosing River, Mill Creek, Mohican River, Muskingum River, Tuscarawas River, Wakatomika Creek, Walhonding River, White Eyes Creek, Wills Creek	
Crawford	Broken Sword Creek, Olentangy River, Sandusky River, Sycamore Creek	
Darke	Greenmile Creek, Painter Creek, Stillwater River, Swamp Creek, West Branch Greenmile Creek	
Defiance	Auglaize River, Gordon Creek, Lick Creek, Lost Creek, Maumee River, Mud Creek, North Powell Creek, South Powell Creek, St. Joseph River, Tiffin River	Milford
Delaware	Alum Creek, Big Walnut Creek, Bokes Creek, Mill Creek, Olentangy River, Scioto River, Whetstone Creek	
Fairfield	Clear Creek, Hocking River, Rush Creek, Salt Creek, Walnut Creek	
Fayette	Compton Creek, Deer Creek, East Fork Paint Creek, North Fork Compton Creek, Paint Creek, Rattlesnake Creek, Sugar Creek	
Franklin	Alum Creek, Big Darby Creek, Big Walnut Creek, Blacklick Creek, Hellbranch Run, Little Darby Creek, Olentangy River, Scioto River, Walnut Creek	
Fulton	Bad Creek, Brush Creek, Mill Creek, Swan Creek, Tennile Creek, Tiffin River	

Ross	Buckskin Creek, Deer Creek, Kinnikinnick Creek, Little Salt Creek, North Fork Paint Creek, Paint Creek, Pigeon Creek, Salt Creek, Scioto River, Walnut Creek	
Sandusky	East Branch Sandusky River, Green Creek, Little Muddy Creek, Muddy Creek, Muskellunge Creek, Nine Mile Creek, Pickerel Creek, Portage River, Sandusky River, South Creek, Sugar Creek, Toussaint Creek, Wolf Creek (Portage River), Wolf Creek (Sandusky River)	Riley
Scioto	Little Scioto River, Ohio River, Pine Creek, Rocky Fork, Scioto Brush Creek, Scioto River, South Fork Scioto Brush Creek, Turkey Creek	Rush, Union
Seneca	East Branch Sandusky River, Green Creek, Honey Creek, Rock Creek, Sandusky River, Wolf Creek	
Shelby	Great Miami River, Leatherwood Creek, Loramie Creek, Mile Creek, Mosquito Creek	
Trumbull	Grand River, Pymatuning Creek	
Union	Big Darby Creek, Bokes Creek, Little Darby Creek, Mill Creek, Rush Creek	
Van Wert	Black Creek, Blue Creek, Dog Creek, Hagerman Creek, Hoaglin Creek, Little Auglaize River, Maddox Creek, St. Marys River, Town Creek	
Warren	Clear Creek, Great Miami River, Little Miami River, Todd Fork	
Washington	Muskingum River, Ohio River	
Wayne		Clinton, Wooster
Williams	Bear Creek, Brush Creek, Clear Fork, Eagle Creek, East Branch St. Joseph River, Fish Creek, Lick Creek, Mill Creek, Nettle Creek, St. Joseph River, Tiffin River, West Branch St. Joseph River	Bridgewater, Center, Florence, Jefferson, Madison, Northwest, St. Joseph, Superior
Wood	Beaver Creek, Brush Creek, Bull Creek, Cedar Creek, Crane Creek, Cutoff Ditch, East Branch Portage River, Maumee River, Middle Branch Portage River, Portage River, Rocky Ford, South Branch Portage River, Toussaint Creek	
Wyandot	Broken Sword Creek, Sandusky River, Sycamore Creek, Tymochtee Creek	

**Note:** As mentioned in General Condition 18-*Endangered Species*, Federal Agencies should follow their own procedures for complying with the requirements of the ESA. Federal applicants must provide the District Engineer with the appropriate documentation to demonstrate compliance with those requirements.

**f. Critical Resource Waters:** Notification is required for all work in Critical Resource Waters. The following are designated as Critical Resource Waters:

- Special habitat waters of Lake Erie including the shoreline, off shore islands, rock outcrops, and adjacent waters within the boundaries defined as 82° 22' 30" West Longitude, 83° 07' 30" West Longitude, 41° 33' 00" North Latitude, and 42° 00' 00" North Latitude.
- In Ohio, two areas have been designated critical habitat for the piping plover (*Charadrius melodus*) and are defined as lands 0.62 miles inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately 2.0 miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

**g. Oak Openings:** Notification is required for all activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry, and Fulton counties. For a map of the Oak Openings Region, visit <http://www.oakopen.org/maps/>.

**6. Notification Submittals:** In addition to the information required under Nationwide Permit General Condition 31, the following information is needed for all Notifications:

hire someone meeting the Professional Qualification Standards as set forth in the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44716) to conduct what they recommend to be appropriate historic property identification efforts (e.g. archeological survey and/or historic structure inventories) to expedite the review process. Be advised, undertaking identification efforts prior to consideration of the potential of the proposed activity to affect historic properties by the Corps is not without risk. It is possible that previous efforts could be determined insufficient or even potentially unnecessary once reviewed by the Corps and other consulting parties.

Upon receipt and review of the information listed above, the Corps will evaluate the submittal. If the Corps determines the proposed activity has the potential to cause effects to a historic property, the Corps will seek consulting parties. In consultation with those parties, the Corps will scope appropriate historic property identification efforts and take into account the effect of the proposed activity on historic properties.

**d. National Wild and Scenic Rivers:** Prior to submitting Notifications for work in a National Wild and Scenic River System, it is recommended that the applicant contact the National Park Service Regional Wild and Scenic Rivers Specialist, at the Midwest Regional Office, 601 Riverfront Drive, Omaha, Nebraska 68102, for assistance in complying with Nationwide Permit General Condition 16.

**e. 401 Water Quality Certification:** For activities that result in between 1/10 and 1/2 acre of loss of waters of the U.S., two copies of the Notification must be submitted. In order to determine if a project meets the terms and conditions of Ohio EPA's 401 water quality certification the following additional information must be submitted:

1) To determine the quality of the wetlands on the site, all wetland delineations must include the latest approved version of the Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form**; and

2) Photographs of all the waterbodies.

Prior to submitting Notifications, the applicant may contact Ohio EPA, Division of Surface Water by writing to (614) 644-2001 at P.O. Box 1049, Columbus, Ohio 43216-1049 and request verification of the ORAM score of the wetlands on the site to expedite the permit process. All relevant information obtained from Ohio EPA should be submitted with the Notification.

**f. Agency Coordination:** In an effort to expedite full agency permit review, it is requested that the applicant submit five (5) copies of the Notification package when the Notification requires full agency coordination in accordance with Nationwide Permit General Condition 31 (d)(2). Applicants are encouraged to submit this information in electronic format as CDs, in order to minimize the use of paper.

**g. Floodplain Coordination:** All Notifications must include a copy of the applicable FIRM map. You can get a FIRMette free from: <http://www.msc.fema.gov>. From this page select the "Product Catalog" tab at the top. Then select "Effective FIRMs /FHBMs". The choices allow you to select a state and county. Then you follow the instructions to create a FIRMette. In addition, from the same web-site, you can obtain a FIRMette for a specific address. From <http://www.msc.fema.gov> conduct a "Product Search" for "Public Flood Map" and then follow the instructions to create a FIRMette.

**Note 1:** In circumstances where there is another lead Federal agency with set procedures for addressing Endangered Species, Cultural Resources, and National Wild and Scenic River Coordination, the applicant can submit documentation showing the coordination has already been completed instead of submitting the additional Notification information requested above

**Note 2:** Nationwide Permit General Condition 31 requires the applicant to include a delineation of special aquatic sites and all other waters of the U.S. on the project site. Special aquatic sites include sanctuaries and refuges, wetlands, mudflats, vegetated shallows, coral reefs, and riffle and pool complexes.

## F. Definitions

**Best management practices (BMPs):** Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

**Compensatory mitigation:** The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

**Currently serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

**Direct effects:** Effects that are caused by the activity and occur at the same time and place.

**Discharge:** The term "discharge" means any discharge of dredged or fill material.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

**Ephemeral stream:** An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

**Establishment (creation):** The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

**High Tide Line:** The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that

term "single and complete project" is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

**Single and complete non-linear project:** For non-linear projects, the term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of "independent utility"). Single and complete non-linear projects may not be "piecemealed" to avoid the limits in an NWP authorization.

**Stormwater management:** Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

**Stream bed:** The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

**Stream channelization:** The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

**Structure:** An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

**Tidal wetland:** A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

**Vegetated shallows:** Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

**Waterbody:** For purposes of the NWPs, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)–(6), that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

## G. Water Quality Certification

### Water Quality Certification General Limitations And Conditions

#### A. CULVERTS

For intermittent and perennial streams:

1. Bottomless or buried culverts are required when culvert size is greater than 36" diameter. This condition does not apply if the culverts will have a gradient of greater than 1% grade or is installed on bedrock. A buried culvert means that the bottom 10% by dimension shall be buried below the existing stream bed elevation.
2. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.
3. When practicable, culverts shall be installed at the existing streambed slope, , to allow for the natural movement of bedload and aquatic organisms.
4. The conditions in this section apply only to the installation of new culverts regardless of which NWP is used to authorize the activity.

#### B. BEST MANAGEMENT PRACTICES

1. All best management practices for storm water management shall be designed and implemented in accordance with the most current edition of the NPDES construction general permit available at: [http://www.epa.ohio.gov/dsw/storm/construction\\_index.aspx#Construction%20General%20Permit](http://www.epa.ohio.gov/dsw/storm/construction_index.aspx#Construction%20General%20Permit), or any watershed specific construction general permit.
2. All avoided water resources and associated buffers/riparian areas shall be demarcated in the field and protected with suitable materials (e.g., silt fencing, snow fencing, signage, etc.) prior to site disturbance. These materials shall remain in place and be maintained throughout the construction process.
3. Disturbance and removal of vegetation from the project construction area is to be avoided where possible and minimized when necessary. Entry to surface waters shall be through a single point of access whenever practicable to minimize disturbance to riparian

the director of Ohio EPA, stating otherwise, is obtained.

6. Representatives from Ohio EPA, Division of Surface Water will be allowed 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 this certification. This includes, but is not limited to, access to and copies of any records that must be kept under the conditions of this certification; and, authorization to sample and/or monitor any discharge activity or mitigation site. Ohio EPA will make a reasonable attempt to notify the applicant of its intention to inspect the site in advance of that inspection.

#### **H. Ohio Coastal Management Program Federal Consistency Concurrence Determination**

The Ohio Department of Natural Resources (ODNR) concurs with the U.S. Army Corps of Engineers' Federal Consistency determination for all nationwide permits except 3, 7, 12, 13, 14, 15, 17, 36, 38, and 51. Therefore, project specific CZMA Federal Consistency Determinations are required from the Ohio Department of Natural Resources prior to the use of nationwide permits 3, 7, 12, 13, 14, 15, 17, 36, 38, and 51 for projects in Lake Erie, including Maumee Bay and Sandusky Bay.

#### **I. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.



**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

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**in**

**Case No(s). 12-2959-EL-BGN**

Summary: Permit Issued in total from Army Corps of Engineers electronically filed by Ms. Kellee C Fletcher on behalf of Oregon Clean Energy, LLC