

Amazon Creek Mitigation Bank, LLC

35749 Spring Hill Road

Creswell, OR 97426

541-895-5910

July 5, 2004

Dear MBRT:

REC'D JUL 9 2004

Enclosed is the final addendum For Phase II.

The financial security document will be executed, and the restrictive covenant recorded, upon receipt of written approval from the DSL & Corps for the creation of Phase II.

Please note that the acreage amount has changed from 37.1 acres to 38.1 for Phase II. This resulted from contracting SureCrop Farm Services to calculate acreage amount and boundary utilizing a mobile GPS base unit. The number of credits will be 19.05 instead of 18.55.

Thank you for your input.

Sincerely,



David Jampolsky
Sponsor
Amazon Creek Mitigation Bank, LLC

Amazon Creek Mitigation Bank

Phase II

Phase II

Addendum to Final Banking Instrument

Dated January 20, 2004, between Amazon Creek Mitigation Bank, LLC, the Oregon Department of State Lands & the US Army Corps of Engineers

This is an addendum to the Wetland Mitigation Bank Final Instrument, Revised January 20, 2002. Any elements of the Final Instrument not modified herein shall remain the same.

The Banking Instrument and this addendum constitute a legally binding agreement between; the Amazon Creek Mitigation Bank, LLC (Sponsor), the Oregon Department of State Lands (DSL), and the U.S. Army Corps of Engineers (Corps), to allow the Sponsor to conduct Phase II of a private Wetland Mitigation Bank. The Sponsor has restored, and created wetland resources on an additional site containing approximately 38.1 acres located to the north of Phase I, and contiguous to the northern boundary of phase I, T 16S, R5W, Sec. 24, Portions of Tax Lots 500 and 501. Generally, it is located approximately three and one-half miles southwest of Junction City, Oregon between Alvadore Road and Amazon Creek (Figure 2) in the agricultural bottomlands of the Willamette Valley. The site consists of approximately 38.1 acres of restored and created wetland, and riparian areas. See Figure 4 GPS map.

Credits may be used to offset impacts to palustrine emergent, forested, scrub-shrub, semi-permanently and permanently flooded wetlands within the service area with a hydrogeomorphic classification of slope/flat. Credits may also be used to offset impacts to other habitat types and species and other types of mitigation and conservation banking upon approval of the appropriate agencies. Credit sales must receive prior approval from the DSL and the Corps, when the Corps takes jurisdiction. Most of the work to produce credits in Phase II was completed in 2001. However, additional plantings of trees and shrubs occurred in 2001 and 2002.

The site is bordered on the west side by agricultural lands, Amazon Creek Mitigation Bank Phase I on the south side, and Amazon Creek Ranch on the north and east sides. Amazon Creek meanders through the length of the site. The site is currently owned and managed by Amazon Creek Mitigation Bank, LLC. Mr. David Jampolsky, president.

2.0 DEMONSTRATED NEED AND SERVICE AREA

Phase I of the Bank has just concluded the second year of operation. Growth in Lane County has met and exceeded original estimates and the need for mitigation credits has

demonstratedly followed this trend. This need has been established and documented by actual credit sales.

In year one 4.25 credits were sold. In year two, 10.65. In this, the third year of operation, Amazon Creek Mitigation Bank began the year with 5.83 credits. So far, the Bank has had seven sales totaling 2.67 credits and is in contract for an additional 3 credits. This leaves only .16 credit remaining. In order for Amazon Creek Mitigation Bank to continue to offer mitigation credits for impacts within the service area, it is essential that Phase II be brought online as soon as possible.

4.0 PROOF OF OWNERSHIP

Attachment I contains the current deed and ownership record for the site. The site is owned by Amazon Creek Mitigation Bank, LLC.

5.0 SITE ASSESSMNET

PFOC-Palustrine/ Forested/Seasonally Flooded (adjacent)

This wetland area runs along the northeast corner of the Bank site adjacent to Amazon Creek.

PEMAd-Palustrine/Emergent/TemporarilyFlooded/diked/partially drained/ditched

R2UBHx-Riverine/Lower Perennial/unconsolidated bottom/excavated This refers to Amazon Creek.

Pem1Hhx-Palustrine emergent persistent permanently-flooded diked/impounded. This refers to the Chub Pond Habitat

5.2 ECOLOGICAL BASELINE

5.2.2 Soils

In addition to the Bashaw clay (8), Awbrig silty clay loam (5), Coburg silty clay loam (31), and Salem gravelly silt loam (118), some Malabon silty clay loam (75) can be found on the second phase according to the Lane County Soil Survey.

Malabon silty clay loam consists of deep well drained soils on valley terraces. These soils formed in silty and clayey alluvium.

5.3 Wetland Determination/Delineation

In June of 2000, Allen Makinson with the Natural Resources Conservation Service

(NRCS) conducted a wetland determination of the entire 200 acre site. This assessment determined that approximately 97.2 acres of the site was prior converted wetland. In addition to that NRCS determination, an on-site meeting with Janet Morlan, Wetland Program Leader for DSL, was conducted on March 20, 2001, and another follow up site visit was conducted April 16, 2002. The number of credits generated for Phase II will be 19.05 for 38.1 acres of enhanced cropped wetland.

6.0 Mitigation Site Plan.

A site plan has been included, (Figure 3) showing the 38.1 acre Phase II site. Also included as Figure 4, is a GPS map, showing Phase I and Phase II to better clarify the position of the sites relative to each other.

6.2 Design Details

The Bank site plan (Figure 3), shows the site and grading plan for Phase II. The following sections detail the measures already completed regarding water sources, grading and erosion control, vegetation establishment, and the operational schedule.

6.2.1 Water Sources

The hydrologic source for the restored and created wetlands is already in place and successful. Captured seasonal high ground water, precipitation and surface water are used to increase the hydrology of the site.

There is one adjustable water control outfall structure located on the north levee of the site. The structure consists of a 24 inch outfall with a three foot wide riser. An emergency flood spillway has been constructed with overflow to Amazon Creek. The water control structure will provide management options for both encouragement of native wetland plants and discouragement of invasive plants and allow water movement and control in peak flow occurrences.

6.2.2 Vegetation

Vegetative plantings have taken place over the last 3 years following the planting list in the Bank Instrument. The vegetation is well established and many volunteer native species are evident. Included as Figure 1, is the first annual monitoring report completed by Paul Adamus in June of 2004.

6.2.4 Operations Schedule

Phase II construction and vegetative plantings are complete.

6.2.5 Wildlife Enhancements and Concerns

Limited hunting will be allowed on the Bank site. Hunting will comply with all State and

Federal regulations. Hunting will be allowed a maximum of four days per week and will not exceed the number of legal hunting hours established by law. The hunting season varies year to year based upon the health of the waterfowl populations and is federally determined. The seasons generally last between 50 to 100 days between mid October through early January.

14.1 Funding

The owners of the Bank will establish a performance bond or letter of credit as outlined in Section 18 in order to make the necessary finances available to successfully execute this mitigation plan and any contingencies which might arise, other than acts of god or other events beyond the Sponsor's control, including but not limited to regulatory, or other governmental changes that would make wetland mitigation banking impractical or impossible.

Section 18.0 Financial Resources.

Phase II of the bank has already been built, the vegetative plantings have occurred, and the performance standards have been met. The financial security document will be a letter of credit similar to the document used in the bank instrument or a performance bond. The financial security for Phase I was in the amount of \$45,000 for 40 acres which equals \$1,125 per acre. The security amount for Phase II shall be \$42,860 ($\$1,125 \times 38.1$ acres). After the first monitoring report showing compliance with the MOA, the financial security will be reduced by 50% (\$21,430). After the second monitoring report showing compliance with the MOA the remaining \$21,430 security shall be reduced an additional 50% leaving \$10,715. After the third monitoring report showing compliance with the MOA the financial security shall be reduced by an additional 50% leaving \$5,357. After the fifth monitoring report showing compliance with the MOA, the remaining security deposit shall be released.

20.0 Time Frames Associated With The Bank

The terms of this agreement will continue until five years after the last credit is sold in Phase II.

**Assessment of “Phase II” Amazon Creek Mitigation Bank
Restored Wetland**

By
Paul Adamus, Ph.D
Adamus Resource Assessment, Inc.
6028 NW Burgundy Dr.
Corvallis, OR 97330

June 2004

Introduction

The Instrument specifies that the Amazon Creek Mitigation Bank wetland that was restored in 2001 shall be monitored annually for at least 5 years to determine if specific wetland features are restored successfully, and consequently, if the MBRT may authorize release of mitigation credits. This report describes results of monitoring of the "Phase II" wetland. Vegetation has not previously been monitored at this site. The Instrument also stipulates that particular comparisons will be made with a reference site, and the MBRT had previously agreed that Stewart Pond wetland complex in Eugene is an acceptable reference site.

Methods

Survey methods similar to those used at the Phase I site were used. Exactly as specified in the Instrument, a systematic quadrat (plot) method for sampling is being used. A total of 30 quadrats were located systematically and surveyed. Quadrats were situated equidistantly (71m apart) along 7 transect lines, which also were 71 m apart. Because of the irregularly tapering shape of the wetland, five transects contained 5 points, one contained 4 points, and one (near the north end) contained a single point. The location of the first quadrat on each transect was staggered. Quadrats were numbered sequentially beginning at the southwest corner and proceeding eastward, then transitioning northward to the next transect and heading westward on that. For surveying herbaceous habitats, each quadrat had dimensions of 1 x 1 m, extending southeastward from its point on the transect. A steel post was installed at the edge of each quadrat to allow resurvey at exact locations in future years. Plants were identified to species where possible and relative percent of each species was estimated in each quadrat. No woody habitats were included in this Phase II survey. Each quadrat on each transect was surveyed for the characteristics described in sections 13.1.1, 13.1.2, 13.1.3 of the Instrument. The Phase II Mitigation Bank site was surveyed on June 10, 2004, and a portion rechecked on June 25, 2004.

Results

GENERAL CRITERIA: For a mitigation site to be counted as "wetland," it must have hydrological conditions, soils, and vegetation that typify wetlands. Soil and hydrological conditions are documented in papers filed separately from this report, and vegetation conditions are documented herein.

From the data from all 30 quadrats (Table 1), the moisture index was calculated using the formula in the *Draft Guidance for Vegetation Planning and Monitoring in Western Oregon Wetlands and Riparian Areas* (June 2004 version). Scores were assigned: 1 = obligate, 2 = FACW, 3 = FAC, 4 = FACU, and 5 = UPL. The average was found to be 2.32, clearly indicating a predominance of wetland plant species cover. The score exceeded 3.00 (suggesting non-wetland conditions) in just 3 of the 30 plots, located on the periphery of the site. Vegetation clearly dominates the site: only 3 of the 30 quadrats contained less than 100% plant cover, and only one of these had more than 50% bare soil. The Phase II site also was found to support a noteworthy richness of plants: 33 species during just this first year of monitoring, and including

just the species that fell within the sample quadrats. This is higher than for a comparable number of plots from the Stewart Pond reference site, which likewise has existed as a restored formerly-riverine wetland but for a much longer period of time. It is noteworthy that the site currently supports several native species that often characterize wet prairies, such as *Alopecurus geniculatus*, *Carex densa*, *Downingia elegans*, *Eryngium petiolatum*, *Madia glomerata*, and *Plagiobothrys figuratus*. A comparable number of sample points selected randomly at the Stewart Pond reference site detected no prairie species.

Text below in *italics* is quoted directly from the Instrument. Other text responds to the Instrument's criteria.

The project will be successful and certified when:

13.1 Vegetation Performance Standards

13. 1.1 Herbaceous Vegetation

→ **CRITERION:** *COVER and COMPOSITION. At the end of the first growing season, desirable herbaceous vegetation will dominate in 60% of the plots located in the non-inundated emergent habitats located at the bank site.*

STATUS: The only herbaceous species designated as undesirable in the Instrument and found within the Mitigation Bank by the approved sampling methodology was *Cirsium arvense*. This species was present in only 1 of the 30 quadrats, and comprised only 5% of the cover in that quadrat.

CRITERION: *SPECIES RICHNESS. At the end of the first and second growing seasons the number of species on the cumulative list of desirable herbaceous plant species (i.e.. the list accumulated from among all plots in herbaceous emergent habitats at the Bank site) will be at least 60% percent of the number of species of desirable herbaceous plants on a comparable list from the reference site... Both planted and recruited species will be included in evaluating these standards.*

STATUS: The cumulative list for a comparable number of randomly-selected quadrats from the Stewart Pond reference site contained a total of 8 herbaceous species, or 7 if we exclude *Phalaris arundinacea* which was designated as undesirable by the Instrument. For comparison, the 30 plots in the Phase II Mitigation Bank site in June 2004 contained 33 herbaceous species, or 32 if we disregard the undesirable *Cirsium arvense*. Table 2 is the list from the Stewart Pond site, and Table 1 is the list from the Phase II part of the Amazon Mitigation Bank site.

→ **CRITERION:** *No more than 15% of individuals will be non-native, invasive, undesirable herbaceous species.*

STATUS: This criterion is clearly met: only one of the 33 species (<1%) in the Phase II Mitigation Bank wetland was a species designated as undesirable, and only one of the 33 quadrats contained a species designated as undesirable.

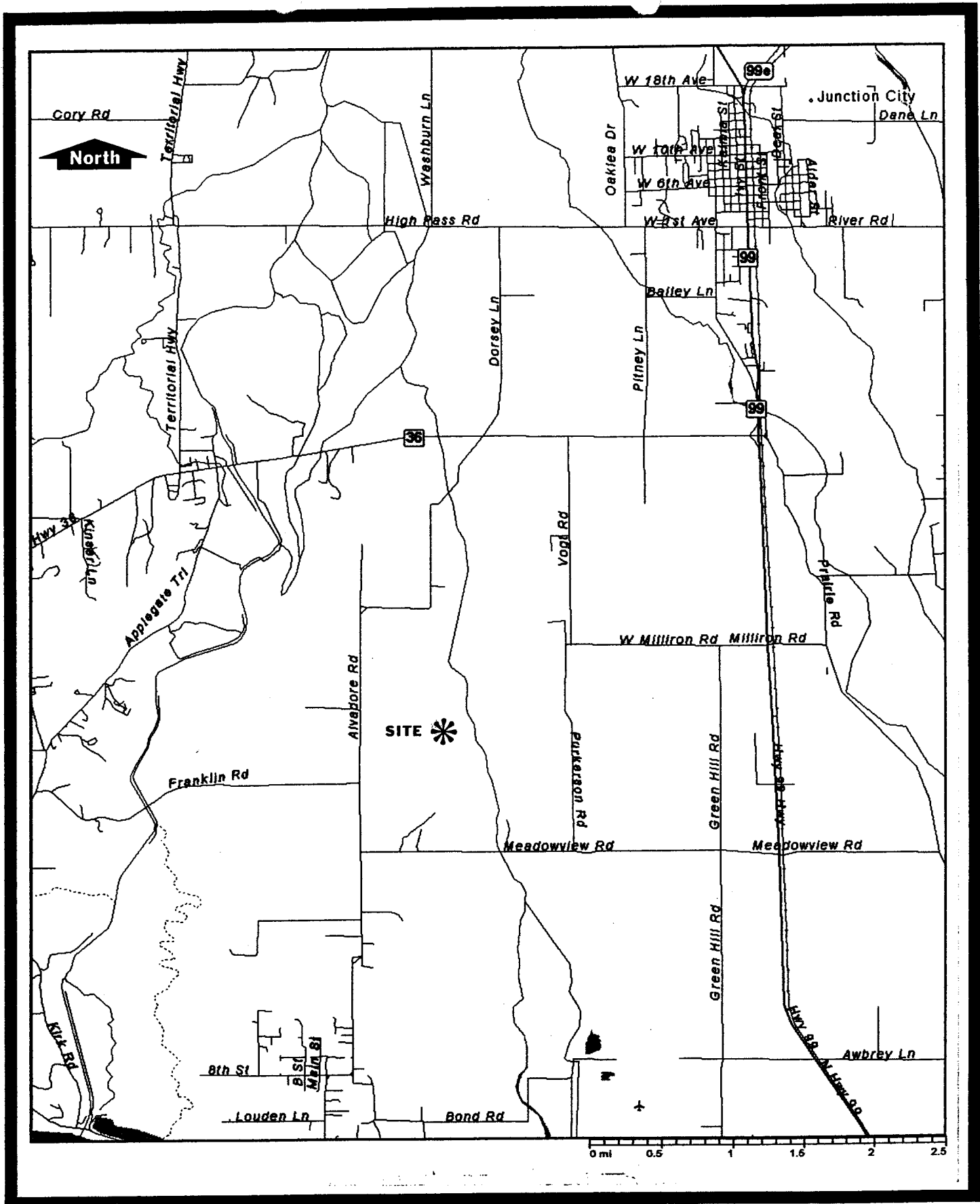
13.1.3 Open Water

➤ **CRITERION:** *In open water areas there will be no more than a total of 15% cover of undesirable, non-native, invasive species.*

STATUS: There are no parts of the Phase II Mitigation Bank wetland that contain surface water year-round. Nearly all of the site is inundated seasonally. Within that area, only one species deemed undesirable was present (as noted in 13.1.1 above), and was present in only one of the sample quadrats. Clearly, that species did not comprise >15% of the cover over the entire site.

Species	Wet status	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
<i>serriola</i>																															
<i>Lolium arundinaceum</i>	FAC-	0	0	0	0	0	95	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Lolium perenne</i>	FACU	0	0	0	0	5	0	0	0	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Lythrum portula</i>	OBL	0	5	1	0	0	0	0	0	0	90	0	85	65	45	0	0	0	20	30	0	30	10	0	0	0	0	55	70	35	1
<i>Madia glomerata</i>	FACU+	95	1	0	0	0	0	1	1	0	0	5	0	0	0	5	10	0	0	0	5	0	0	0	0	90	0	0	0	0	1
<i>Mentha pulegium</i>	OBL	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	1	0	0	0	0	0	0	0	0
<i>Parentucellia viscosa</i>	FAC-	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
<i>Plagiobothrys figuratus</i>	FACW	0	1	1	1	0	0	0	0	20	5	3	10	5	0	0	0	0	1	1	45	1	30	0	0	0	0	0	1	5	1
<i>Polygonum persicaria</i>	FACW	0	0	0	1	0	0	1	0	0	0	0	0	0	1	0	0	1	0	0	0	10	0	4	0	0	0	0	0	10	0
<i>Rorippa curvisiliqua</i>	OBL	0	1	1	1	0	0	1	1	0	0	1	0	1	0	0	0	1	0	0	0	1	0	0	0	0	0	1	1	1	1
<i>Veronica peregrina</i>	FACW	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Veronica peregrina</i>	OBL	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	1	0	1	0	0	0	20	0	0	1	0	1	1
<i>Vicia americana</i>	FAC	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0

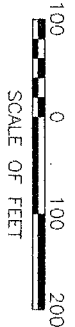
Figure I



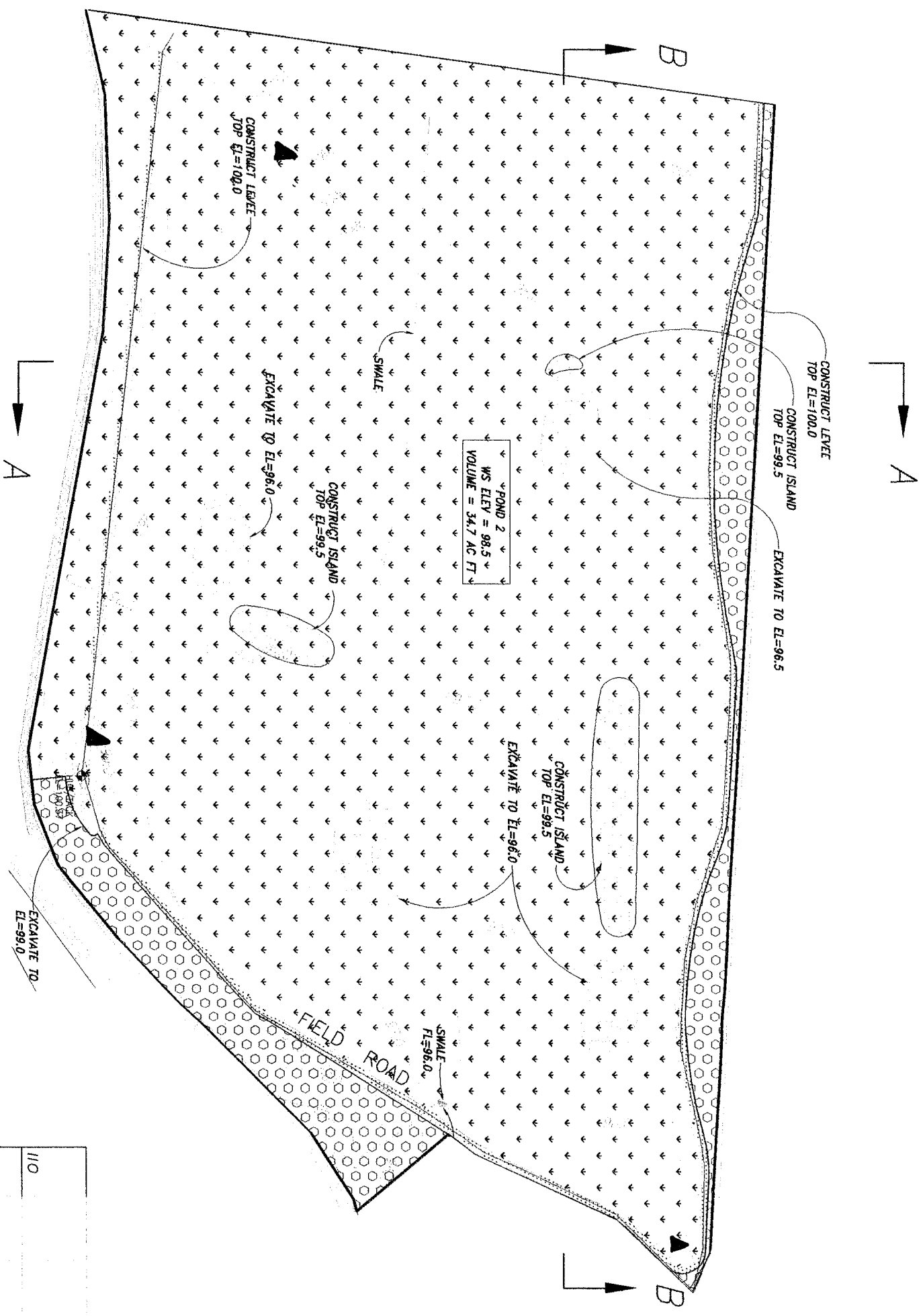
**Amazon Creek Wetland Mitigation Bank
SITE LOCATION MAP**

Figure 1

Figure 2

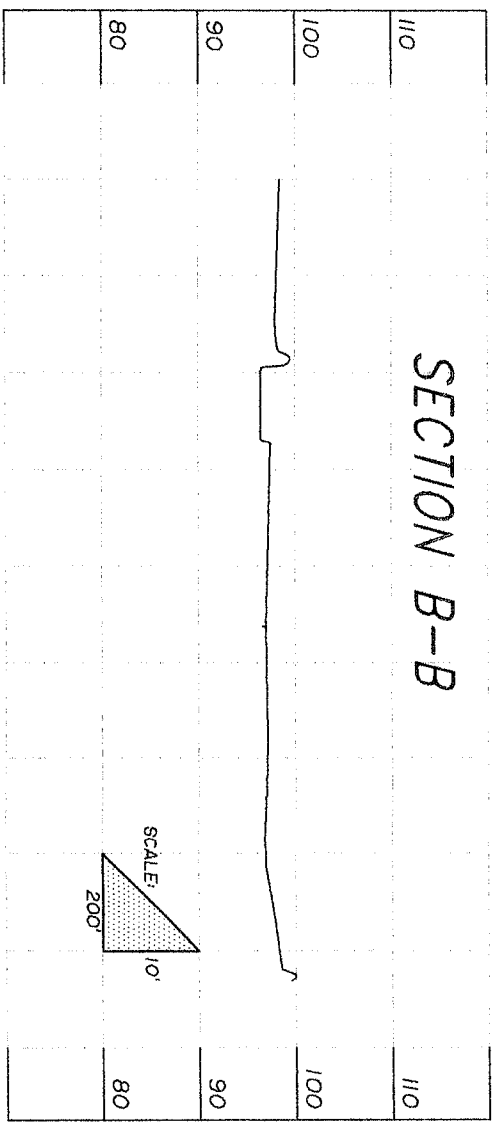
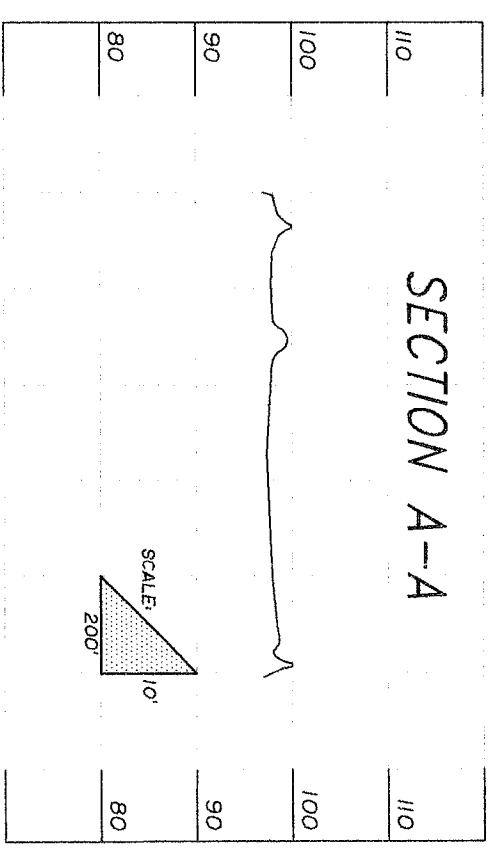


PLAN



LEGEND

- PFOC - 1.5 ACRES
- PEMC - 36.4 ACRES
- PHOTO POINTS (3)
- DRAINAGE DITCH

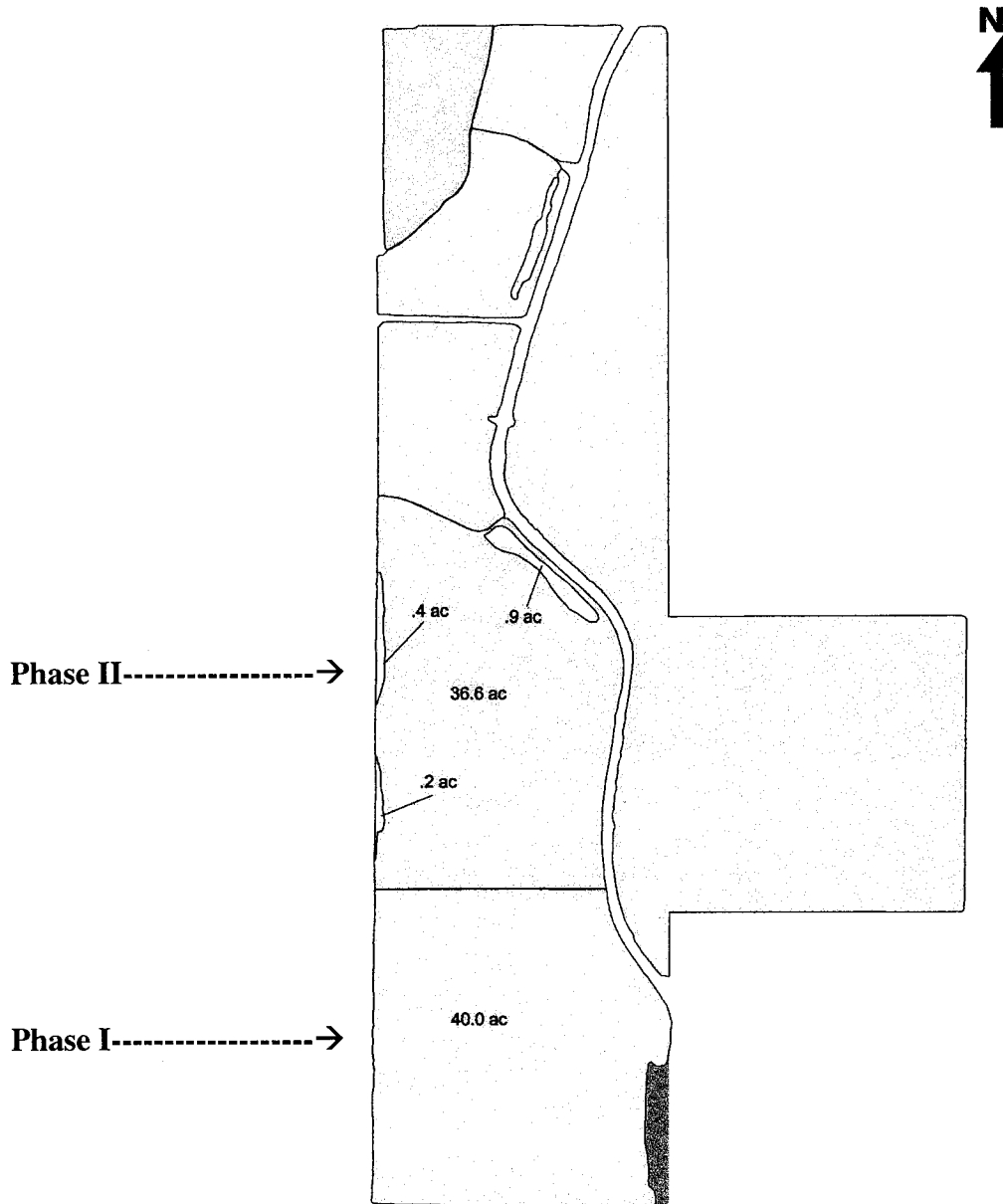


AMAZON CREEK MITIGATION BANK PHASE 2
LANE COUNTY, OREGON
WETLAND MITIGATION SITE PLAN

Figure 3

Jampolsky

GPS Map



SureCrop Farm Services

28410 MILLIRON RD
JUNCTION CITY, OR 97448
TELE: (541) 998-1121 FAX: (541) 998-1620

<http://www.surecrop.com>

Figure 4

Attachment 1

INDIVIDUAL BARGAIN AND SALE DEED

Map No. 16 05 24 00 00501

Tax Account No. 1305737

Amazon Creek Ranch LLC, Grantor,
conveys to
Amazon Creek Mitigation Bank, LLC., an Oregon Limited Liability Company
the following described real property situated in Lane County, Oregon,
to-wit:

The Southwest Quarter of the Southwest Quarter of Section 13, Township 16 South, Range 5 West of the Willamette Meridian, Lane County, Oregon.

The Northwest Quarter of the Southwest Quarter, the Southeast Quarter of the Northwest Quarter, the Southwest Quarter of the Northwest Quarter, the Northwest Quarter of the Northwest Quarter of Section 24, Township 16 South, Range 5 West, Willamette Meridian, all in Lane County, Oregon.

The true consideration for this conveyance is \$ None

"THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930."

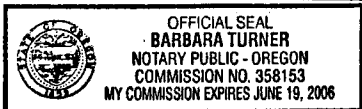
Dated: July 1, 2004.

Amazon Creek Ranch LLC.

By: [Signature]
David L. Jampolsky, Member

STATE OF OREGON
County of Lane

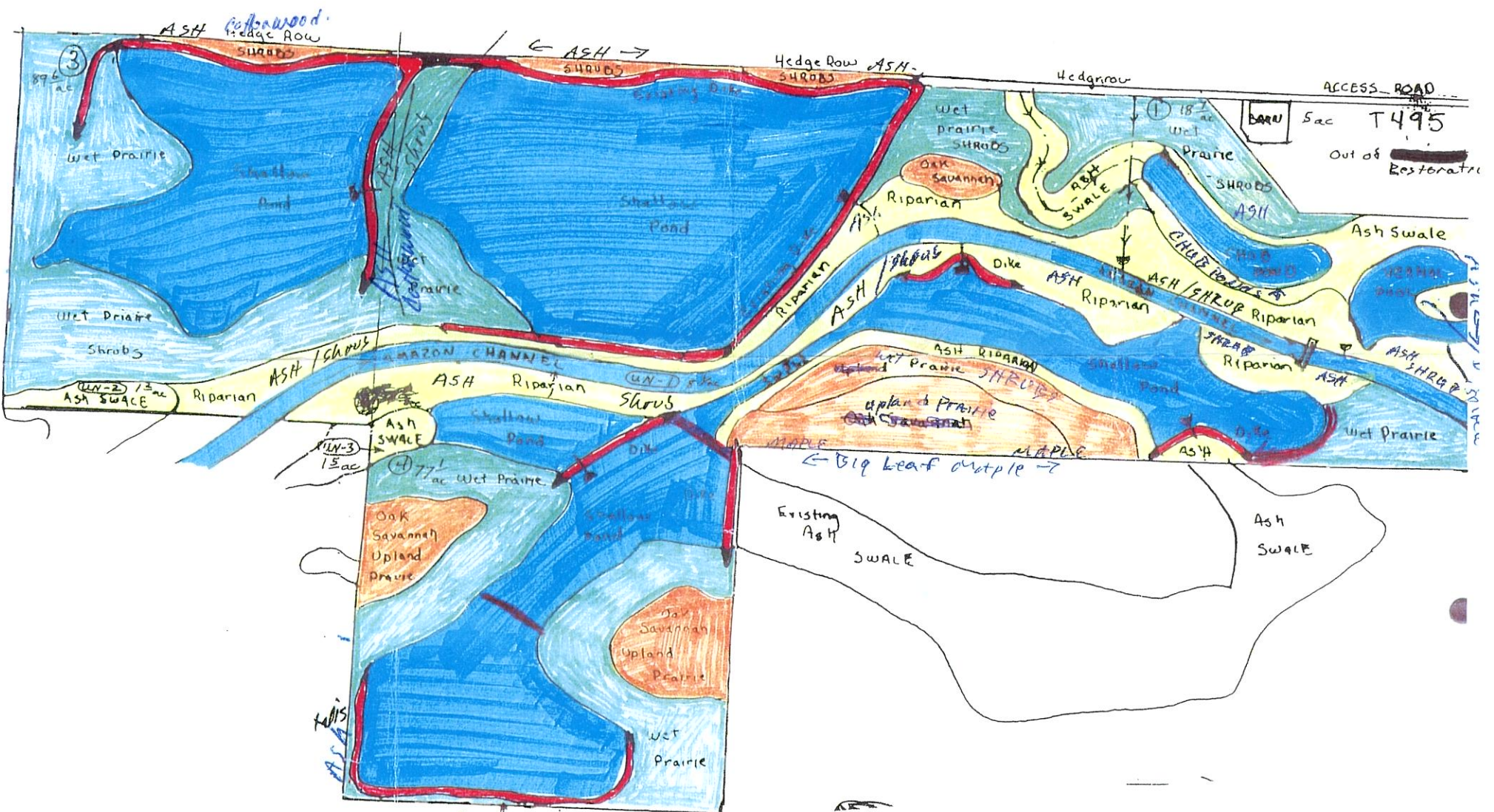
This instrument was acknowledged before me on July 1, 2004 by David L. Jampolsky as Member of Amazon Creek Ranch, LLC.

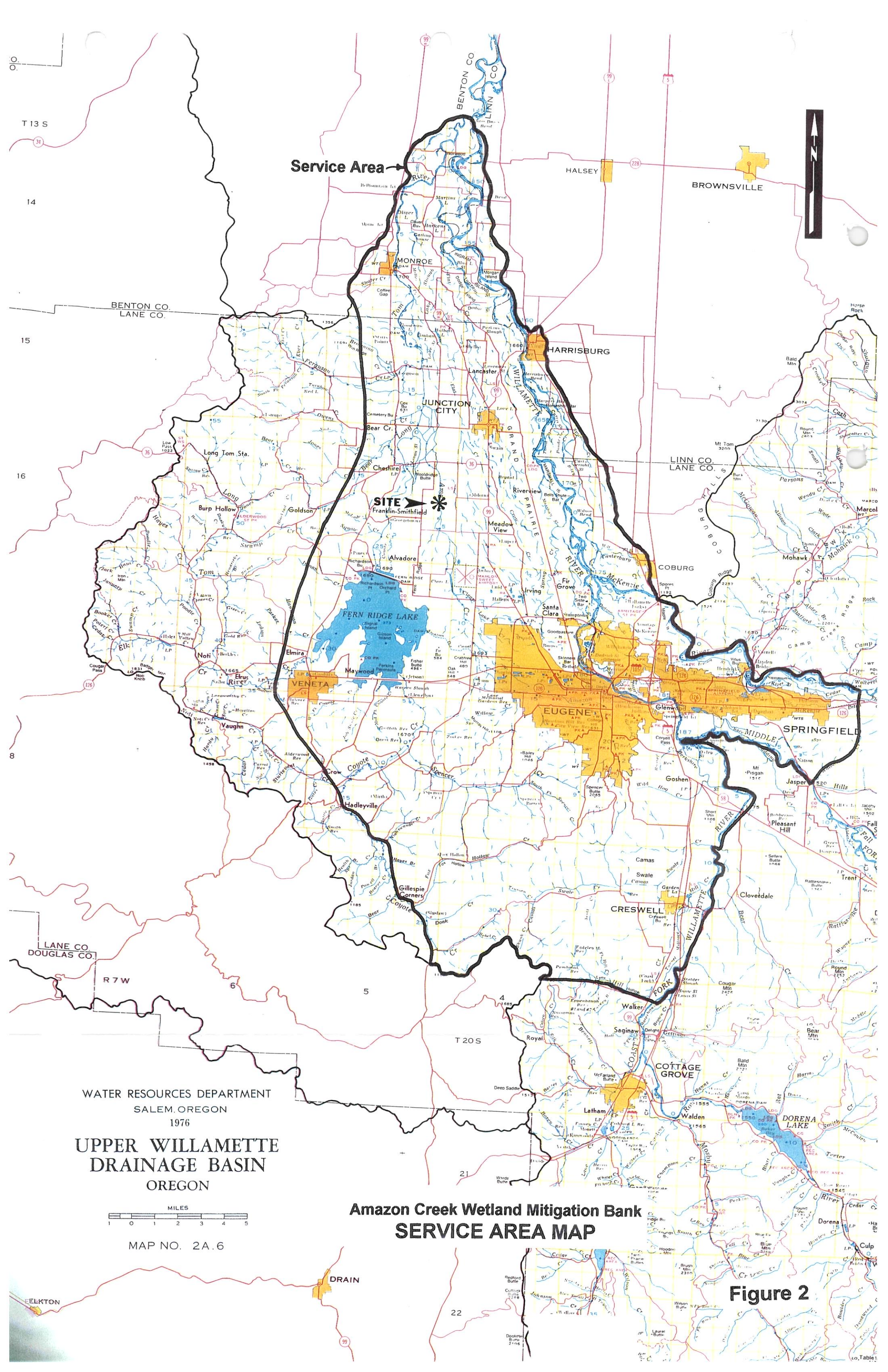


[Signature]
Notary Public for Oregon
My commission expires:

Until a change is requested, all tax statements shall be sent to the following address:

No change





Service Area

BROWNSVILLE

HALSEY

HARRISBURG

JUNCTION CITY

SITE
Franklin-Smithfield

FERN RIDGE LAKE

VENETA

EUGENE

SPRINGFIELD

CRESWELL

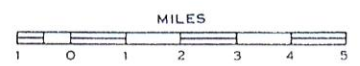
COTTAGE GROVE

DORENA LAKE

**Amazon Creek Wetland Mitigation Bank
SERVICE AREA MAP**

WATER RESOURCES DEPARTMENT
SALEM, OREGON
1976

**UPPER WILLAMETTE
DRAINAGE BASIN
OREGON**



MAP NO. 2A.6

Figure 2

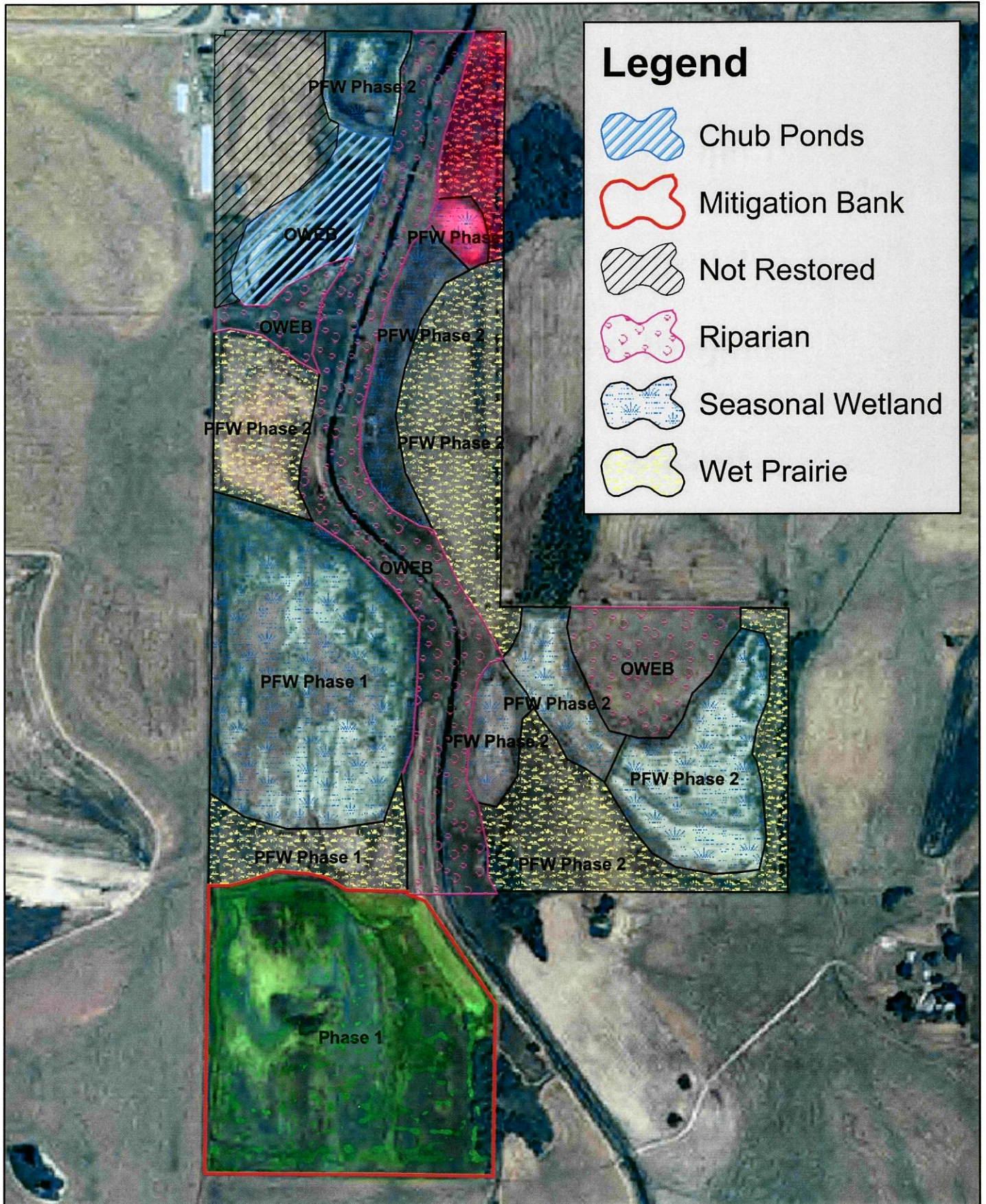
DRAIN

ELKTON

22

co. Table

Jampolsky Restoration Project



RESTRICTIVE COVENANT

Amazon Creek Mitigation Bank, LLC owner of the 38.1 acres of restored and created wetlands, located in Lane County, Oregon, T16S, R5W, Section 24, Tax Lot 501 as described in "Exhibit A", makes the following declarations as to limitations, restriction and uses to which the property described herein is now subject and specifies that such declarations shall constitute covenants to be appurtenant to and run with the land as provided by law for the purpose of keeping the land as wetland. The owner's obligations shall be included in any transfer, conveyance, or encumbrance of the protected property or any part thereof. The property subject to this Restrictive Covenant has been offered to the U.S. Army Corps of Engineers (Corps) and the Oregon Department of State Lands (DSL) to offset wetland loss or degradation at other locations, primarily in Lane, Linn and Benton Counties. This arrangement is defined in a Memorandum of Agreement and Wetland Mitigation Banking Instrument dated November, 2001, allowing Amazon Creek Mitigation Bank, LLC to restore and create wetlands on this property and to sell credits to entities holding specific permits issued by the Corps and DSL. The protected property has been restored to wetland under agreement with the Corps and DSL. This covenant assures that the owner or owners of the protected property, their grantees, heirs, successors and assigns, will permanently and continuously allow the existence of those wetland areas restored, created, or enhanced under that agreement.

The property described herein shall, except as provided in "Reserved Rights" below, be subject to the following:

1. There shall be no cutting, trimming, mowing, alteration or spraying with biocides of any vegetation in the Protected Property, except to eliminate undesirable or non-native invasive species from the site, or conduct other required management or maintenance.
2. There shall be no agricultural, commercial, or industrial activity undertaken or allowed on the Protected Property except for limited plant or seed harvesting and management activities consistent with preserving the wetland character.
3. No domestic animals shall be allowed to graze or dwell on the Protected Property.
4. There shall be no filling, excavating, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, minerals, nor any dumping of ashes, trash, garbage, or any other material, and no changing of the topography of the land of the Protected Property once the wetlands are constructed unless it is necessary to meet management objectives, maintenance or to further the wetland characteristics of the Protected Property.
5. There shall be no building of new roads.
6. There shall be no operation of motorized vehicles of any type on the Protected Property, except for those necessary for remedial action, management, and maintenance purposes. Any motorized vehicle use that does occur shall be restricted to the upland portions of the site whenever practical.

NEVERTHELESS, and not withstanding any of the forgoing provisions, the Owners of the Protected Property reserve for themselves, their heirs, successors, assigns, and designees, the following rights; provided, however, that the exercise of such rights is consistent with the preservation of the protected property as wetland.

RESERVED RIGHTS

1. Any activities related to the initial or subsequent construction, grading, regarding, management, wildlife enhancement, planting, replanting, maintenance, trash removal,

invasive weed or undesirable species control may be conducted in compliance with the mitigation plan, Oregon's Removal-Fill Laws, and the requirements of the DSL.

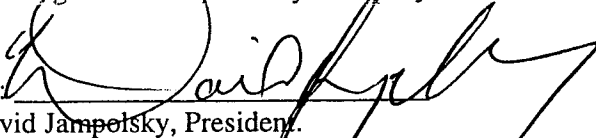
2. Any activities related to education. Activities may include soil, water, or plant sampling, wildlife monitoring or other "outdoor classroom" activities. The Protected Property may also be used for limited native seed harvesting.
3. Trails may be made through the upland habitat portions of the Protected Property using gravel, wood chips or other products normally used for trail development and upkeep. These areas may be provided with benches and/or raised walkways.
4. Access by agricultural or other equipment needed to conduct site management, maintenance, or necessary/required remedial activities, in particular, access by the Junction City Water District is allowed under the terms of their easement along the Amazon Canal.
5. The right to recreational uses including hunting, fishing, and hiking for fee or gratis. Hunting will comply with all state and federal regulations. In addition, a maximum of four hunters will be allowed to hunt on site at any one time. Hunting will be allowed a maximum of four days per week.
6. The right to prevent trespass and control access.
7. The right to install and maintain blinds for wildlife viewing and hunting.

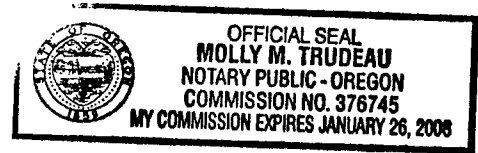
BURDENS

Expenses relating to preservation of the Protected Property subject to this Covenant shall be allocated to and paid by the Owner or Owners of the Protected Property as outlined in the banking instrument. These Burdens may be transferred to another entity by transfer of ownership or granting a Conservation Easement to allow that entity access to the Protected Property and the right to conduct such activities necessary to maintain the character and function of wetland on the Property.

This restrictive covenant entirely or in part may be terminated, amended, modified, or revoked only upon written approval of the District Engineer of the Portland District of the U.S. Army Corps of Engineers and the Director of the Oregon Department of State Lands in agreement with the Owner of the Protected Property. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the laws of the state of Oregon.

Amazon Creek Mitigation Bank, LLC
An Oregon Limited Liability Company

By: 
David Jampolsky, President.



Dated this day of October, 2004
State of Oregon, County of Lane

This instrument was acknowledged before me on October ²⁷~~21~~, 2004, by David Jampolsky, President of Amazon Creek Mitigation Bank, LLC, an Oregon Limited Liability Company.

 1/24/08

Notary Public for Oregon Commission expires:

Exhibit A

The Southwest Quarter of the Northwest Quarter of Section 24, Township 16 South, Range 5 West, of the Willamette Meridian, all in Lane County, Oregon.