MEMORANDUM OF AGREEMENT

For the

EVERGREEN WETLAND MITIGATION BANK

Between the Sponsors:

Al Sullivan
Marvin and Cindy Gilmour
Ray Fiori
Steven Smith
Patrick Thompson

And the Mitigation Banking Review Team:

U.S. Army Corps of Engineers (Corps)
Oregon Department of State Lands (DSL)
U.S. Environmental Protection Agency (EPA)
U.S. Fish and Wildlife Service (USFWS)
Oregon Department of Environmental Quality (DEQ)
Oregon Department of Fish and Wildlife (ODFW).

March 2006
Revised June 2006
Revised October 2006
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Table of Contents

EXHIBITS

MEMORANDUM OF AGREEMENT
AND
WETLAND MITIGATION BANK INSTRUMENT
FOR
EVERGREEN WETLAND MITIGATION BANK

This Memorandum of Agreement which describes the establishment, use, operation, and maintenance of the Evergreen Wetland Mitigation Bank (Bank) is an agreement made and entered into by and among Alton Sullivan, Marvin Gilmour, Ray Fiori, Steven Smith and Patrick Thompson (Sponsors), the U.S. Army Corps of Engineers (Corps), the Oregon Department of State Lands (DSL), the U.S. Environmental Protection Agency (EPA), the U.S. Fish and Wildlife Service (USFWS), the Oregon Department of Environmental Quality (DEQ), and the Oregon Department of Fish and Wildlife (ODFW).

I. PREAMBLE

A. Purpose: Whereas, the purpose of this MOA is to establish guidelines and responsibilities for the establishment, use, operation, and maintenance of the Bank. The Bank will be used for compensatory mitigation for unavoidable impacts to waters of the United States including wetlands that result from activities authorized under Section 404 and 401 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Oregon's Removal-Fill Law [Oregon Revised Statutes (ORS) 196.800-196.990 and Oregon Administrative Rule (OAR) 141-085] provided such activities have met all applicable requirements and are authorized by the appropriate authority.

B. Goals and Objectives: The primary objectives are to restore, enhance and maintain in perpetuity freshwater marsh habitats, wetland prairie habitat, and riparian forest habitats by reducing the rate of water runoff and increasing the period of water saturation at the soil surface. The primary goal of the Bank is to restore approximately 161.12 acres and enhance 13.4 acres of seasonally flooded saturated, inundated or ponded wetland from 174.52 acres of cropped hydric soils and existing ash riparian wetland. This will be accomplished by constructing low wide berms to contain a seasonal high water table and surface water flows during the wet season (November - April) and a reduction of invasive plant species within the riparian area along with rerouting channelized surface water flows.

The ultimate goals of the Bank are to increase the water storage and delay; increase sediment stabilization and phosphorus retention; increase nitrogen removal; increase primary production; increase invertebrate habitat support; increase amphibian and turtle habitat; increase breeding and waterbird support; increase wintering and migrating waterbird support; increase songbird habitat support; and increase the support of characteristic vegetation.

The majority of the site will be developed as wet prairie with interspersed seasonal surface flows spreading out and passing through palustrine emergent marsh areas with shallow seasonal open water. This area will have a hydrogeomorphic classification of slope/flat. The ash riparian area surrounding Evergreen Creek will be widened to include a total width of at least 180 feet from the top of bank on each side of Evergreen Creek and the reestablishment of the historic braided channels within the riparian zone. This combination of activities will increase surface water

retention and infiltration, wildlife habitat, enhanced aesthetics, functions, and values similar to those found at the reference sites. To provide a buffer from Bellfountain Road, a perimeter planting of palustrine scrub/shrub and forested species will be planted.

The agricultural portion of the site will be restored primarily to a wet prairie system with some interspersed seasonal swales spreading out and passing through wet marshy areas. The slight variations in topography within the system will facilitate direction of water movement, provide additional areas for vegetation micro-habitats and allow for more diversity for wildlife habitat.

C. Location and Ownership of Parcel: (1) Whereas, the Sponsors have provided proof of ownership of the mitigation bank site at the legal description described in Exhibit A of this MOA. Said parcels are hereinafter referred to as the "Property." (2) The Sponsors have not proposed additional phases in the Instrument; therefore, any phases beyond the now defined Bank requires a modification to the Instrument and a separate MOA. If the owner sells this property, the Corps and DSL must be notified in writing prior to the sale of the property. (3) The Property is located in Benton County, Township 12 South, Range 5 West, Section 19, Tax Lot 700. The Bank is approximately 174.52 acres. There is no residence or building at this site, thus has no address.

D. Project Description: Whereas, in accordance with this MOA, the Sponsors shall maintain the Bank in such condition for five (5) years after the last credit has been sold, then the long term management plan as described in Exhibit H shall take effect. The bank sponsors shall be responsible for compliance with this MOA and the Instrument until the Bank is turned over to the long term steward as described in Exhibit H and approved by the MBRT. The Bank area shall consist of a mixture of creation, enhancement, and restoration as described in Exhibit C.

E. Baseline Conditions: Whereas, the restoration/enhancement portion of the Bank has, until this spring, been used for agricultural purposes for the production of grass seed. The Bank site is surrounded by farmland, wetlands, and some forest.

F. Establishment and Use of Credits: Whereas, in accordance with the provisions of this MOA and upon satisfaction of the performance measures contained in Section V. E., mitigation credits determined in accordance with Exhibit C will be available to be used as mitigation in accordance with all applicable requirements for permits issued under Section 404 and 401 of the Clean Water Act, Section 10 of the Rivers and Harbors Act and Oregon's Removal-Fill Law [Oregon Revised Statutes (ORS) 196.800-196.990]. The final number of credits will be determined by the MBRT based upon the final approved design and the resulting habitats planned for the Bank in accordance with the terms and conditions contained herein.

G. Whereas, as of the date of the MOA and subject to execution of the MOA by a duly authorized representative of the respective agencies described below, the Mitigation Banking Review Team (MBRT) consists of:

1. Corps, Co-Chair; and

2. DSL, Co-Chair; and

3. EPA; and

4. USFWS; and

5. DEQ; and

6. ODFW.

H. Disclaimer: Whereas, this MOA does not in any manner affect statutory authorities and responsibilities of the signatory parties.

I. Exhibits: Whereas, the following Exhibits are incorporated by reference to this Banking Instrument:

1. "Exhibit A," Vicinity Map, Legal Property Description
2. "Exhibit B," Mitigation Site Plan; (drawing of the site)
2. "Exhibit C," Final Instrument;
3. "Exhibit D," Crediting and Debiting Procedure for the Bank;
4. "Exhibit E," Service Area Map and Discussion;
5. "Exhibit F," Restrictive Covenant;
6. "Exhibit G," Financial assurance Document; and
7. "Exhibit H," Proposed Long Term Management Plan
8. "Exhibit I," Sampling Plan Methodology Map

NOW, THEREFORE, the parties hereto agree as to the following:

II. DEFINITIONS*

1. BANK SPONSORS – A person(s) who is proposing, or has established and/or is maintaining a mitigation bank. The sponsors is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument, unless specified otherwise explicitly in the Instrument.

2. COMPENSATORY MITIGATION – Activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development.

3. CREATION – To convert an area that has never been a wetland to a jurisdictional wetland.

4. CREDIT – A unit of measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory mitigation. ORS 196.600(2) further defines this term.

5. DEBIT – A unit of measure representing the reduction of credits at the mitigation bank corresponding to the impact at the project site.

6. ENHANCEMENT – Human activity that increases the function of an existing degraded wetland.

7. INSTRUMENT – The legally binding and enforceable agreement between the Director of DSL, the District Engineer of the Corps, and a mitigation bank sponsors that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management.

8. FINANCIAL ASSURANCES – The money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsors to ensure that the functions of the subject bank are achieved and maintained over the long term, pursuant to the terms and conditions of the Instrument.

9. FUNCTIONS – The physical, chemical, and biological ecosystem processes of an aquatic resource without regard to their importance to society.

10. LEDGER – An accounting of credits and debits.

11. MITIGATION – Sequentially avoiding impacts, minimizing impacts, and compensating for remaining impacts to aquatic resources; the same meaning as DSL's OAR 141-85-0010 (129).

12. MITIGATION BANK – Wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities.

13. MITIGATION BANK REVIEW TEAM (MBRT) – An advisory committee to the DSL and the Corps on wetland mitigation bank projects. An interagency group of federal, state, tribal, and/or local regulatory and resource agency representatives which are signatory to a MOA for a Mitigation Bank Instrument and oversee the establishment, use, and operation of a mitigation bank with the Corps and DSL serving as co-chair's.

14. MITIGATION SITE PLAN – A detailed portion of the bank instrument (Exhibit C) that identifies specifically how aquatic resources and associated upland buffers will be restored, created, enhanced, or preserved on the mitigation bank.

15. PRESERVATION – The protection of ecologically important aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands or other aquatic resources as necessary to ensure protection and/or enhancement of the aquatic ecosystem.

16. RESTORATION – Re-establishment of wetland hydrology to a former wetland sufficient to support wetland characteristics.

17. PERFORMANCE MEASURES/SUCCESS CRITERIA – The minimum standards required to meet the objectives for which the Bank was established.

18. SERVICE AREA – The boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrological Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

* Derived from:

Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (FR V. 60 No. 228, November 28, 1995);

Cowardin, L.M. et al. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U. S. Fish and Wildlife Service, Office of Biological Services. Washington, D.C. FWS/OBS-79/31. 131 pp.

Oregon Administrative Rules 141-085.

III. AUTHORITIES

The establishment, use, operation and maintenance of the Bank is carried out in accordance with the following authorities:

A. Federal:

1. Clean Water Act (33 USC 1251 et seq.);
2. Rivers and Harbors Act (33 USC 403);
3. Fish and Wildlife Coordination Act (16 USC 661 et seq.);
4. Regulatory Programs of the Corps of Engineers, Final Rule (33 CFR Parts 320-330);
5. Guidelines for Specification of Disposal Sites for Dredged and Fill Material (40 CFR Part 230);
6. Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army concerning the Determination of Mitigation Under Clean Water Act, Section 404 (b)(1) Guidelines (February 6, 1990);
7. Federal Guidance for the Establishment, Use, Operation of Mitigation Banks (60 F.R. 58605 et seq. November 28, 1995); and
8. Regulatory Guidance Letter No. 02-02, U.S. Army Corps of Engineers, December 26, 2002

B. State of Oregon:

1. Oregon Administrative Rules (OAR) 141-85-0010 through 141-85-445; and
2. Oregon Revised Statutes (ORS) 196.600-196.990

IV. ESTABLISHMENT OF THE BANK

A. Scope of Work: The Sponsors agree to perform all necessary work, in accordance with the provisions of this MOA, to establish and maintain aquatic habitats, as described in Exhibit C, until it is demonstrated to the satisfaction of the agencies represented on the MBRT (acting through the co-chair's) that the project complies with all provisions contained herein, or until all credits are sold, whichever is later. Work as described above shall include implementing the provisions of this MOA. Prior to any debiting, the Mitigation Site Plan for the Bank proposed for debiting must be approved by the MBRT, the site for must be secured, and appropriate financial assurances (escrow agreement) must be established. A copy of the proof of financial assurances must be submitted to the MBRT prior to the release of any credits at the Bank.

B. Permits: The Sponsors will obtain all appropriate permits or other authorizations needed to construct and maintain the Bank, prior to debiting any credits. This MOA does not fulfill or substitute for such authorization.

C. Final Instrument: Upon signing this MOA, the MBRT approves the MOA and all of its exhibits. The effective date of the MOA however, is when all exhibits have been finalized.

D. Financial Assurance Requirements: The Sponsors agree to provide a financial assurance payable to DSL for $228,770 with KPD Insurance, Eugene, Oregon, or its successor in interest (the entity holding the financial assurance). The financial assurance may be released incrementally on the following schedule:

For the initial release of credits (not to exceed 30% of the total number of credits that could be derived from this site) the Sponsors agrees to provide adequate financial assurances to ensure that wetland acreage would be restored on site in the event of a default (see also Part IV, F). Release of funds from this financial assurance will be recommended by the MBRT incrementally on the following schedule when, all performance measures, as described in Section V. E. are being met: 30 percent – one year after the first credit release; 30 percent – two years after first credit release; 30 percent– five years after first credit is released; and 10% or the remainder upon submittal of the final monitoring report at bank closure, 5 years after the last credit sale.

E. Real Estate Provisions: The Sponsors shall record a restrictive covenant on the Bank land and provide a copy to the Corps and DSL prior to the release of any credits. DSL and the Corps will allow the restrictive covenant to be replaced by a conservation easement or similar legal property protection instrument when the project is handed off to the long term steward. The restrictive covenant is attached as Exhibit F. A copy of the recorded document shall be provided to the Corps and DSL prior to any release of credits.

F. The Sponsors agree to submit an as-built report to the co-chair's of the MBRT within 60 days following completion of the grading. The as-built report will describe in detail any substantial deviation from the requirements described in the Mitigation Site Plan submitted to the MBRT co-chairs in accordance with the Section VI.B., and the as-built report shall contain a survey showing finished grades.

V. OPERATION OF THE BANK

A. Service Area: The Bank is established to provide mitigation to compensate for impacts to waters of the United States and/or state waters, including wetlands, within the service area depicted on the excerpt of the USGS Hydrologic Unit Map as shown in Exhibit E. This service area shall include all the 5th Field Hydrologic Units within the 4th Field Hydrologic Unit 17090003, limited to a 600-foot elevation or less.

B. Access: The Sponsors will allow, or otherwise provide for, access to the site by members of the MBRT or their agents or designees, as reasonably necessary, for the purpose of inspection, compliance monitoring, and remediation consistent with the terms and conditions of this MOA throughout the period of Bank establishment, monitoring, and operation. Inspecting parties shall not unreasonably disrupt or disturb activities on the property.

C. Projects Eligible to Use the Bank: The following types of projects may be eligible to use the Wetland Bank:

1. All activities regulated under Section 10 of the Rivers and Harbors Act, Section 404 of the Clean Water Act and/or the Oregon's Removal-Fill Law [Oregon Revised Statutes (ORS) 196.800-196.990] located within the service area of this Bank may be eligible to use this Bank as compensatory mitigation for unavoidable impacts; credits purchased may only be used in conjunction with a Corps or DSL permit authorization, or to resolve a DSL or Corps violation.

2. Use of credits may only be authorized when adverse impacts are unavoidable; when onsite compensatory mitigation is either not practicable or use of a mitigation bank is environmentally preferable to onsite compensation.

3. For projects in the service area of this Bank that require authorization under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, and/or DSL's Removal-Fill Permit, and if said authorizations require compensatory mitigation, credits from this Bank may be permitted to be used to satisfy these compensatory mitigation requirements if the Sponsors and the third party (permittee) reach a mutually acceptable financial agreement and subject to regulatory approval on a case by case basis.

D. Number of Credits: Credits and debits will be assessed using measurements of the area of impacts and the mitigation land area. The number of credits created by development of this Bank is determined by a combination of land area and mitigation ratios as described in Exhibit D. The amount to be debited for each impact will depend upon the area of wetlands or waters to be impacted as determined during the permitting process.

E. Performance Measures: Project success will be reviewed by the MBRT who will ultimately be responsible for any credits release. The MBRT has some latitude with respect to credit releases and the performance measures but the following criteria are the primary methods to access project success:

1. Wetland hydrology: Wetland hydrology sufficient to meet the criteria defined in the 1987 Corps of Engineers Wetlands Delineations Manual (1987 Wetland Delineation Manual) will to be present in *at least* three out of five years if the weather records are close to normal and no irrigation is supplied. Water depth and depth of saturation will be evaluated throughout the site using a combination of monitoring wells and a one time hydrology and vegetation delineation designed to meet the requirements of the 1987 Wetland Delineation Manual. The soil parameter is expected to be disturbed by the proposed grading, therefore lack of hydric soil indicators will not be interpreted as disqualifying a plot as wetland.

Water Monitoring Tubes: Ten (number of tubes will be driven by the site conditions, following bank grading) groundwater monitoring tubes will be constructed and monitored to show the duration of saturation. Tube monitoring data shall be collected three times between approximately March 1 and May 30 to demonstrate sufficient duration of wetness to meet the 1987 Wetland Delineation Manual. The monitoring report will also include precipitation data for the monitoring period from the nearest recording station. The locations of the monitoring tubes will be representative of the hydrological variation on site to prove duration of saturation needed to meet the 87 Manual criteria. These will be included on the as-built drawings.

Delineation: Paired plots concentrating along the wetland boundary, for any plots dominated by upland vegetation, and in any high areas will be utilized to indicate the exact location of the wetland boundary. The paired plots will be evaluated using soil probes or pits. This will be done to document that wetland hydrology has been achieved throughout the site. In addition to plot data, these areas will be visually documented with photographs to show a dominance of wetland species. The wetland boundary will then be displayed on a site map to confirm acreage achieving the performance measure.

2. Vegetation:

Emergent Herbaceous

1. A minimum of 55% of the relative plant cover is comprised of native species.
2. No more than 15% of the relative plant cover is comprised of non-native invasive species as define below.
3. The wetland's moisture index is less than 3.0.

*Non-native invasive species to be included: reed canary grass (*Phalaris arundinacea*), purple loosestrife (*Lythrum salicaria*), Himalayan blackberry (*Rubus discolor*), Japanese knotweed (*Polygonum cuspidatum*), Eurasian water milfoil (*Myriophyllum spicatum*), climbing nightshade (*Solanum dulcamara*) (and yellow-flag iris (*Iris pseudacorus*), Anne's lace (*Daucus carota*), Canadian thistle (*Cirsium arvense*), bull thistle (*Cirsium vulgare*), orchard grass (*Dactylis glomerata*) and annual ryegrass (*Lolium multiflorum*) or others as determined by the MBRT.

Wetgrass Prairie

1. At least 10 wetgrass prairie species are present as listed in "Species Composition for Willamette Valley Vegetation Types" by Kathy Pendergrass, August 2003, *(cited as Appendix II of the Instrument) by John Marshall*

(USFWS), December 19, 2004 author of "Draft Guidance on Vegetation Planning and Monitoring in Western Oregon Wetlands and Riparian Areas.

2. Tufted hairgrass (*Deschampsia cespitosa*) is represented by 25% or greater relative plant cover.
3. At least 50% of the relative plant cover is comprised of native species.
4. No more than 15% of the relative plant cover is comprised of non-native invasive species as defined above.
5. The prairie's moisture index is between 2.0 and 3.0.
6. No more than 5% relative plant cover is composed of shrubs or trees.

Shrub and Forest - Restoration

By the end of the second growing season, the newly planted shrub and forest component of the wetland will meet or exceed 75% of the species richness of the reference site (excluding non-native invasive species). The plant density in forested and shrub/scrub wetlands will be at least 80% of the reference site, of species that are rated FAC or wetter, excluding FAC- species. This must be achieved by the end of the second growing season following planting and maintained through the end of the monitoring period until trees and shrubs are established and free to grow. There will be no more than 15% aerial coverage of non-native invasive species*. These densities will be a combination of planted individuals and natural recruitment.

In addition the herbaceous layer in the forest and shrub areas, will meet or exceed the performance measures for emergent herbaceous wetlands as stated above.

Forest - Enhanced

Year five performance measure for the enhanced forested wetland will be maintaining the existing stem density of the native wetland forest and shrub species while managing for no more than 15% of non-native invasive species*.

3. Methodology

Restoration and Enhancement Portion - The methodology for sampling this portion of the Bank will be a modified version of the monitoring protocols suggested in the December 19, 2004 "*Draft Guidance for Vegetation Planning and Monitoring in Western Oregon Wetlands and Riparian Areas*". Modifications to these protocols have been made based upon field experience of the authors and uniqueness of the site. The existing monitoring data from the Willamette Floodplain Research Natural Area (RNA) at W.L. Finley National Wildlife Refuge, will be used for the prairie portion of the Bank. Ash forest at the RNA will also be used for the reference site, except that monitoring data will be collected. The data will be collected using the same methodology as the for the Bank monitoring.

Monitoring within the herbaceous and created shrub and forested portions will be conducted using a stratified systematic plot method for the sampling points

(See Exhibit I). The transects will be laid out in a stratified arrangement along one baseline with equal distance between each transect (approximately 400'). The transects will cross the entire wetland. The sampling plots will be predetermined and systematically plotted on the transects at 200-foot intervals from each other. The herbaceous sample plots will be one meter quadrants, located at the northwest corner of each point nested within a ten-foot square shrub sampling plot starting at the same point. When needed, a 30-foot diameter forest sample plot will be placed with its center at the plot center point encompassing both the herbaceous and shrub sampling plots. The starting point of the sample plots on each transect line will be staggered in order to cover a broader area. The sampling points will be evaluated and if needed additional points placed to make sure that a sufficient number of plots are taken in each of the wetland types. The sample plots will be permanently identified in the field and will be plotted on a site map.

The relative plant cover for each plot will be determined for each herbaceous species. If a plot includes bare soil, the reason for the bare soil will be noted and the percent it covers of each plot included. The number of stems for each shrub and tree species will also be determined. The sample plot data will then be assessed according to the performance measures for diversity, percent cover of each species present, native/non-native and invasive status, and moisture index via the indicator status. If applicable, further calculations will be completed using supplied pre-formatted spread sheets as referred to in the "*Draft Guidance for Vegetation Planning and Monitoring in Western Oregon Wetlands and Riparian Areas*".

Prior to concluding monitoring, the number of sample plots will be evaluated to determine if this number of plots is sufficient, using a species area curve. The data will be taken and the species-area curve developed. After the curve flattens out it will be deemed a sufficient number of plots when there are three plots in a row with one or fewer new species. If the species area curve indicates that more sampling plots are needed, they will be added. However, no fewer than 50 sample plots will be examined in the Bank.

Enhanced Forested Wetland - Four, 50-foot diameter plots will be permanently marked within the enhanced forested wetland. These will be examined and the percent cover of non-native invasive species will be determined and compared to the performance measures.

F. Schedule of Credit Release: Upon submittal of all appropriate documentation by the Sponsors, and subsequent approval by the MBRT, the MBRT co-chair's will provide in writing the release of credits for use by the Sponsors or for transfer to a third party in accordance with the following schedule.

Release 1 (Fall/Winter 2006): Up to 30 percent upon submission of the grading as-built, submission of a copy of the financial assurance, Restrictive Covenant, submission of financial assurance and the MBRT conducts a field inspection.

Release 2 (Spring/Summer 2007): Up to 20 percent upon demonstration of all performance measures being achieved and delineation of acreage meeting the 1987 Wetland Delineation Manual hydrology (if weather conditions are close to normal).

Release 3 (Spring/Summer 2008): Up to 20 percent upon demonstration of all performance measures being.

Release 4 (Spring/Summer 2009): Up to 20 percent upon demonstration of all performance measures being achieved.

Release 5 (end of the 5th year monitoring or 5 years after replanting for those areas replanted): All remaining credits (10%) upon demonstration of all performance measures being achieved. In addition, the long term management plan, funding and identification of a suitable long term steward, must be reviewed and approved by the MBRT.

Release #	**Timing**	**Percentage**
1	Fall/Winter 2006	Up to 30%
2	Spring/Summer 2007	Up to 50%
3	Spring/Summer 2008	Up to 70%
4	Spring/Summer 2009	Up to 90%
5	End of 5th year monitoring	Up to 100%

G. Conditions on Debiting: Any credits debited before achieving the performance measures (e.g. the 30% advance release of Credits), shall require conformance with the financial assurance requirements described in Section IV.D. Aside from the advance release of credits, if the number of credits debited exceeds the number achieved and maintained, then no further credit sales shall be permitted by the Corps and DSL until the Sponsors have implemented corrective actions and achieved the performance measures so as to provide for the number of credits generated to be greater than or equal to the number of credits debited to cover permitted impacts with this Bank.

H. Provisions For Uses of the Mitigation Bank Area: The Sponsors shall not use or authorize the use of areas within the Bank for any purpose that interferes with its conservation purposes other than those specified below:

a) Monitoring of vegetation, soils and water;
b) Maintenance of wetlands, trails, bridges, berms, dams, outlet and spillway structures, and other appurtenant facilities;
c) Hunting and fishing and other recreational uses such as hiking and bird watching;
d) Ecological education; and
e) Compliance with state or federal regulations or appropriate court orders.

VI. MAINTENANCE AND MONITORING OF THE BANK

A. Maintenance Provisions: The Sponsors agrees to perform all necessary work to maintain the Bank consistent with the maintenance criteria established in the Instrument. The Sponsors shall continue with such maintenance activities until completion of the monitoring period described in Section VI.B. Deviation from the approved Instrument is subject to review and written approval by MBRT, acting through the co-chairs.

B. Monitoring Provisions: The Sponsors agrees to perform all necessary work to monitor the Bank to demonstrate compliance with the performance measures established in this MOA.

The monitoring program shall follow the guidelines established below:

1. An as-built survey will be submitted to DSL and the Corps within sixty days of final grading to verify topography and water sources. Photos will be taken throughout the spring at the designated photo stations to verify that the hydrology will be adequate to assure success of this plan. An initial vegetation survival survey will be completed in the spring, following planting and again the following fall to document planting success and to initiate any remedial action that might be required to meet the applicable performance measures.

2. Reference Sites:

Wet prairie and forested riparian areas have both been identified at the W.L. Finley National Wildlife Refuge's Willamette Floodplain Research Natural Area (RNA). The RNA was established in 1966 and includes excellent examples of grassland-forest plant communities found on wet valley bottom habitats in the Willamette Valley. The RNA contains both forested and prairie habitats within the 519 acre site. The ash dominated forests (~116 acres) have been related to Kuchler's Type 25 Alder-Ash Forest (Franklin et.al 1972).

It will be used to help establish target conditions, and for background monitoring purposes. The reference site at Finley's RNA site is located approximately 4½ miles south of the Bank and has excellent examples of both a slope/flat and riverine flow-through HGM wetlands. The RNA site at Finley was chosen for several reasons including its natural area features, exceptional plant diversity, similar soils series as those identified on the Bank (primarily Dayton soils along with Woodburn silt loam and Waldo silty clay loams), elevation, topographic position, and assured access.

There is existing vegetation data for the RNA site from several projects that have documented the geomorphic features and ecological characteristics of the RNA. The information provided in published inventories and research studies will be used to guide Evergreen's surface grading and vegetation restoration plan. The two major studies that will be used are Kagan (1985) and Streatfield and Frenkel (1997).

The Kagan report evaluated the RNA and an adjacent 77 acres of natural ash bottomland. Kagan's report includes a plant species list for the RNA.

A second ecological survey of the RNA was published in 1997 (Streatfield and Frenkel). They provide the most recent baseline vegetation data for the prairie sites and also provide initial evaluation of native and non-native plant responses to fire. The authors also noted distinct vegetation patterns associated with lenticular mounding patterns of the geomorphic surface.

The "mound" areas are about 150 meters x 70 meters in size and 50 cm higher in elevation than adjacent "intermound" areas. Even though mounded areas provide additional potential diversity of plant communities within the RNA, they also provided areas where non-native plants appeared in highest density. Annuals accounted for 57% of the species found. Introduced and native species were found in about equal proportions. Shrub species was more common on mound areas. This mounding effect is being duplicated at Evergreen Bank with the construction of the berms. The berms are necessary to restore hydrology and to provide diversity.

The intermound areas were dominated by water tolerant species with native species being dominant (~73 %). The authors concluded restoration of native prairie conditions would be easier to achieve and maintain in the more saturated intermound areas.

There are approximately 116 acres of ash dominated forest in the RNA. However, no site specific plot data has been collected on the ash forested components. Due to the lack of specific data for the forested portion of the RNA, several survey plots will be established in the Evergreen existing ash forested area to use as reference plots for the Bank. These plots will follow the same methodology as for the Bank monitoring. An alternative method is that classic species composition data could also be derived from Franklin and Dyrness (1988).

The reference site will also be used to compare seasonal water level fluctuations. In the event that there is a problem with the hydrology of the Bank, the reference site will be used to determine if the hydrological problem is site-specific or a widespread occurrence such as drought conditions or possible outside hydrologic interference due to changes in surrounding land use.

Literature Cited

Franklin, J.F., F.C. Hall, C.T. Dyrness, and C. Maser. 1972. Federal Research Natural Areas in Oregon and Washington – A Guidebook for Scientists and Educators. Pacific Northwest Forest and Range Experiment Station. U.S. Department of Agriculture. Portland, Oregon. 7p. Willamette Floodplain Research Natural Area.

Franklin, J.F. and C.T. Dyrness. 1988. Natural Vegetation of Oregon and Washington. Oregon State University Press, Corvallis. 452 p.

Kagan, J. 1985. Unpublished Report. Willamette Valley Research Natural Area, Oregon, Evaluation for Designation as a National Natural Landmark; Prepared for the National Park Service, Department of Interior. Oregon Natural Heritage Program, The Nature Conservancy.

Streatfield, R. and R.E. Frenkel. 1997. Ecological Survey and Interpretation of the Willamette valley Floodplain Research Natural Area, W.L. Finley National Wildlife Refuge, Oregon, USA. Natural Areas Journal 17:346-354.

3. Annual reports for the Bank will be filed with DSL and the Corps each November, for five years after the last credit is released in the Bank (minimum of 10 monitoring reports). Full monitoring reports will accompany any request for credit release or at other scheduled reporting dates, the MBRT feels a full monitoring report is necessary. Partial monitoring reports will be submitted each year a full is not required.

Full Monitoring Reports will specifically address progress towards all performance measures and any remedial action taken to correct deficiencies that might have occurred in meeting the standards. A detailed narrative summarizing the condition of the Bank and all regular maintenance activities will be included in the reports. Yearly photographs will be included, taken from established photo points. A summary of credits sold by the bank will also be included with each report.

Partial Monitoring Reports will address any remedial actions taken to correct deficiencies that might have occurred in meeting the standards when a full monitoring report is not necessary. A detailed narrative summarizing the condition of the Bank and all regular maintenance activities will be included. Yearly photographs will be taken from established photo points providing representative perspectives of the mitigation area. Photos from each photo point will be included as well as a summary of credits sold by the bank.

4. The planting of the Bank will be supervised by a wetland specialist, horticulturalist or biologist. The monitoring program will be conducted either by the owner under the direction of a wetland delineator or a wetland delineator.

5. The Bank's annual review by the MBRT will be conducted each spring, beginning in 2007. This will allow time for the annual monitoring report (due each November) to be prepared and disseminated prior to the MBRT meeting. Any remediation measures that might become necessary will be reviewed with the MBRT as they become necessary and will be summarized at the annual review meeting.

C. Accounting Procedure: The Sponsors shall submit a statement to the Corps and DSL each time credits are debited. If requested, the Corps and/or DSL will distribute the statement to other members of the MBRT. In addition, the Sponsors shall submit an annual ledger to the Corps and DSL for distribution to all members of the MBRT, showing all transactions at the Bank for the previous reporting period and a cumulative tabulation of all transactions to date. At a minimum, each ledger must include the following information: permittee, Corps and DSL permit number, type of permit, locality, amount of impacts, and amount of credits debited from the Bank and the date of transaction). The MBRT will review the annual report to assure no net loss of wetlands acreage. Annual ledgers and transaction reports shall be submitted to the MBRT as long as credits remain in the Bank and the Bank remains operational.

D. Intentionally Left Blank

E. Contingency Plans/Remedial Actions: In the event the Bank or a specific phase of the Bank fails to achieve the performance measures specified in Part V, Section E of this MOA, the Sponsors shall develop necessary contingency plans and implement appropriate remedial actions for the Bank or that phase of the bank in coordination with the MBRT. In the event the Sponsors fails to implement necessary remedial actions within one growing season (November 1 of the following year) after notification by the Corps and/or DSL of necessary remedial action to address any failure in meeting the performance measures, the MBRT (acting through the co-chairs) will notify the Sponsors and the appropriate authorizing agency (ies) and recommend appropriate remedial actions including suspension/revocation of available mitigation credits.

If DSL and/or the Corps determine that the bank is operating at a deficit, they will notify the sponsors in writing that credit sales shall immediately cease, and that remediation is necessary. The MBRT will consult with the sponsors to develop appropriate remedial actions to resolve the deficit. If the approved remedial actions result in failure of site conditions to improve, or continued deterioration in the growing season following this notification, the MBRT will continue to participate in adaptive management and seek resolution in consultation with the sponsors. If DSL and/or the Corps determine that conditions at the bank site have failed to improve or continue to deteriorate due to the sponsors becoming unwilling or unable to implement the remedial actions, either agency may employ its usual methods to enforce compliance with their respective permit. Either agency may also request that whatever amount of the financial assurance deemed necessary be transferred to a party acceptable to these agencies to undertake corrective actions.

If a situation develops in which the land where the bank is sited fails to meet wetland criteria despite remedial efforts, and there is still a deficit of wetlands achieved relative to the number of credits already sold, the agencies retain all existing rights to seek any additional value related to the land thereafter released from bank obligations, so that this value can be applied toward land costs at a new mitigation site. This land value element may be sought separately from or jointly with the financial assurance or other compliance tools.

At the written request of the Sponsors, the MBRT will perform a compliance visit to determine whether all Performance Measures have been satisfied.

F. Default: Should the MBRT determine that the Sponsors are in material default of any provision of this MOA, the MBRT, acting through the co-chairs may notify the Sponsors that the sale or transfer of any credits will be suspended until the appropriate deficiencies have been remedied. Upon notice of such suspension, the Sponsors agrees to immediately cease all sales or transfers of mitigation credits until the Corps and DSL inform the Sponsors that sales or transfers may be resumed. Should the Sponsors remain in default, the MBRT, acting through the Corps and DSL, may terminate the MOA and any subsequent Bank operations. Upon termination, the Sponsors agree to perform and fulfill all obligations under this Agreement relating to credits that were sold or transferred prior to termination.

G. Bank Closure: At the end of the monitoring period (five years after the last credit sale), upon satisfaction of the performance measures, the Corps and DSL shall issue a written certification of satisfaction to the Sponsors and the entity holding the financial assurance, and thereafter any remaining financial assurances will be released to the Sponsors. The Sponsors may be allowed to utilize that portion of the Bank lands that have not had compensation credits debited from it (i.e. Restoration, Creation, Enhancement, or Preservation lands) provided the utilization does not adversely impact the areas from which compensatory mitigation credit has been debited.

VII. RESPONSIBILITIES OF THE MITIGATION BANK REVIEW TEAM

A. The agencies represented on the MBRT agree to provide appropriate oversight in carrying out provisions of this MOA.

B. The agencies represented on the MBRT agree to review and provide comments on all project plans, proposed additions of land to the Bank, annual monitoring reports, credit review reports, contingency plans, and necessary permits for the Bank. Comments, if any, on the final construction documents as described in Exhibit C, additions of land to the Bank, monitoring reports, credit review reports, contingency plans, and permits for Bank construction and operation will be reviewed within thirty (30) calendar days from the date of complete submittal. The co-chairs of the MBRT shall coordinate such review with members of the MBRT so that comments can be provided within the thirty (30) calendar day comment period.

C. The agencies represented on the MBRT agree to review and confirm reports on evaluation of performance measures prior to approving credits within the Bank.

D. The agencies represented on the MBRT shall conduct compliance inspections, as necessary to verify credits available at the Bank, annual inspections, and recommend corrective measures (if any) to the Sponsors, until the terms and conditions of the Instrument have been determined to be fully satisfied or until all credits have been sold, whichever is later.

VIII. OTHER PROVISIONS

A. Force Majeure: The Sponsors will not be responsible for Bank failure that is attributed to natural catastrophes such as flood, drought, disease, regional pest infestation, etc., that the MBRT, acting through the co-chair's, determine is beyond the reasonable control of the Sponsors to prevent or mitigate.

B. Dispute Resolution: Resolution of disputes about application of this MOA shall be in accordance with those stated in the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 F.R. 58605 et seq., November 28, 1995). Disputes related to satisfaction of performance measures may be subject to independent review from government agencies or academia that are not part of the MBRT. The MBRT will evaluate this input and determine whether the success criteria are met. Appeals of any DSL decisions shall be processed according to OAR 141-85-0075.

C. Validity, Modification, and Termination of the MOA: This MOA will become valid on the latter date of either the Sponsor's signature or the signature of the representative of the Corps or DSL. The MOA will become effective once the deed restriction and financial assurance documents are finalized and provided to the DSL and Corps. This MOA may only be amended or modified with the written approval of all signatory parties. Any of the MBRT members may terminate their participation upon written notification to all signatory parties without invalidating this MOA. Participation of the MBRT member seeking termination will end 30 days after written notification.

D. Specific Language of MOA Shall Be Controlling: To the extent that specific language in this document changes, modifies, or deletes terms and conditions contained in those documents that are incorporated into the MOA by reference, and that are not legally binding, the specific language within the MOA shall be controlling.

E. Notice: Any notice required or permitted hereunder shall be deemed to have been given either (i) when delivered by hand, or (ii) three (3) days following the date deposited in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, or (iii) sent by Federal Express or similar next day nationwide delivery system, addressed as follows (or addressed in such other manner as the party being notified shall have requested by written notice to the other party):

Marvin and Cindy Gilmour
6001 NW Gilmour Lane
Albany, Oregon

Al Sullivan
P.O. Box 2118
Lebanon, OR 97344

Ray Fiori
29594 Camp Adair Road
Monmouth, OR 97361

Steven P Smith
P.O. Box 664
Philomath, OR 97370

Patrick S. Thompson
P.O. Box 1240
Marcola, OR 98454

U.S. Army Corps of Engineers
CENWP-OP-G- Policy Specialist
P.O. Box 2946
Portland Oregon 97208-2946

Oregon Department of State Lands
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279

U.S. Environmental Protection Agency
Oregon Operations Office
811 SW Sixth Avenue
Portland, Oregon 97204-1395

U.S. Fish and Wildlife Service
Oregon Fish and Wildlife Office
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266

Oregon Department of Environmental Quality
Quality Executive Building
811 SW 6th Avenue
Portland, Oregon 97204

Oregon Department of Fish and Wildlife
3406 Cherry Avenue NE
Salem, Oregon 97303

F. Entire MOA: This MOA constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements or undertakings.

G. Modification: This MOA may not be modified except by the written agreement of the signatory parties. In the event the Sponsors determines that modifications must be made in the Instrument to ensure successful establishment of habitat within the Bank, the Sponsors shall submit a written request for such modification to the MBRT, through the co-chair's, for approval. The MBRT, through the co-chairs, agree to not unreasonably withhold or delay such approval. Documentation of implemented modifications shall be made consistent with this MOA.

H. Invalid Provisions: In the event any one or more of the provisions contained in this MOA are held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions hereof, and this MOA shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

I. Headings and Captions: Any paragraph heading or captions contained in this MOA shall be for convenience of reference only and shall not affect the construction or interpretation of any provisions of this MOA.

J. Counterparts: This MOA may be executed by the parties in any combination, in one or more counterparts, all of which together shall constitute but one and the same instrument.

K. Binding: This MOA shall be immediately, automatically, and irrevocably binding upon the Sponsors and its heirs, successors, assigns and legal representatives upon execution by the Sponsors, the Corps, and DSL even though it may not, at that time or in the future, be executed by the other potential parties to this MOA. The execution of this MOA by EPA, DEQ, ODFW, or the USFWS, or other agency, city or county shall cause the executing agency to become a party to this MOA upon execution, even though all or any of the other potential parties have not signed the MOA. Execution does not signify the agencies' agreement with the use of Credits in the Evergreen Wetland Mitigation Bank in connection with any specific permit or project.

L. Liability of Regulatory Agencies: The responsibility for financial success and risk to the investment initiated by the Sponsors rests solely with the Sponsors. The Regulatory Agencies (Agencies) that are parties to this MOA administer their regulatory programs to best protect and serve the public's interest in its wetlands and waterways, and not to guarantee the financial success of mitigation banks, specific individuals, or entities. Accordingly, there is no guarantee of profitability for any individual mitigation bank. Bank sponsors should not construe this MOA as a guarantee in any way that the Agencies will ensure sale of credits from this Bank or that the Agencies will forgo other mitigation options that may also serve the public interest. Since the Agencies do not control the number of mitigation banks proposed or the resulting market impacts upon success or failure of individual banks, in depth market studies of the potential and future demand for bank credits are the sole responsibility of the mitigation bank proponent.

M. Grant Program Participation: According to the Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks (Guidance) published in the Federal Register on November 28, 1995 by the Corps, EPA, the Natural Resource Conservation Service, USFWS, and the National Marine Fisheries Service, wetlands restored through the Conservation Reserve Program or similar programs cannot be used to generate credits from a mitigation bank. In accordance with the Guidance, Federally-funded wetland restoration projects cannot be used to generate credits within this mitigation bank.

N. Suspension of Credits: The co-chairs, acting on behalf of the MBRT may suspend the sale of credits if new information received by the MBRT indicates information in this MOA was falsely presented or due to a breach of this MOA.

IN WITNESS WHEREOF, the parties hereto have executed this MOA on the date herein below last written by the Co-Chairs.

By the Bank Sponsors:

Alton E. Sullivan — Date: 11-7-06

Marvin Gilmour — Date: 11-7-06

Ray Fiori — Date: 11-7-06

Steven P. Smith — Date: 11-7-06

Patrick S. Thompson — Date: 11-7-06

MITIGATION BANK REVIEW TEAM

By the MBRT Co-Chairs:

Thomas E. O'Donovan — Date: 4 DEC '06
Colonel, Corps of Engineers
District Commander

Louise Solliday, Director — Date: 11/28/06
Oregon Department of State Lands

By the MBRT Members of the Evergreen Wetland Mitigation Bank:

_____ _____

Michelle Pirzadeh, Director Date
Office of Ecosystems, Tribal, and Public Affairs
Environmental Protection Agency, Region 10

By the MBRT Members of the Evergreen Wetland Mitigation Bank:

_____ _____

Kemper M. McMaster, Director Date
Oregon State Office
U.S. Fish and Wildlife Service

By the MBRT Members of the Evergreen Wetland Mitigation Bank:

_____ _____

Holly Schroeder, Water Quality Administrator Date
Oregon Department of Environmental Quality

By the MBRT Members of the Evergreen Wetland Mitigation Bank:

_____ _____

David M. Anderson, Regional Supervisor Date
Oregon Department of Fish and Wildlife

"Exhibit A"
Vicinity Map
Legal Property Description

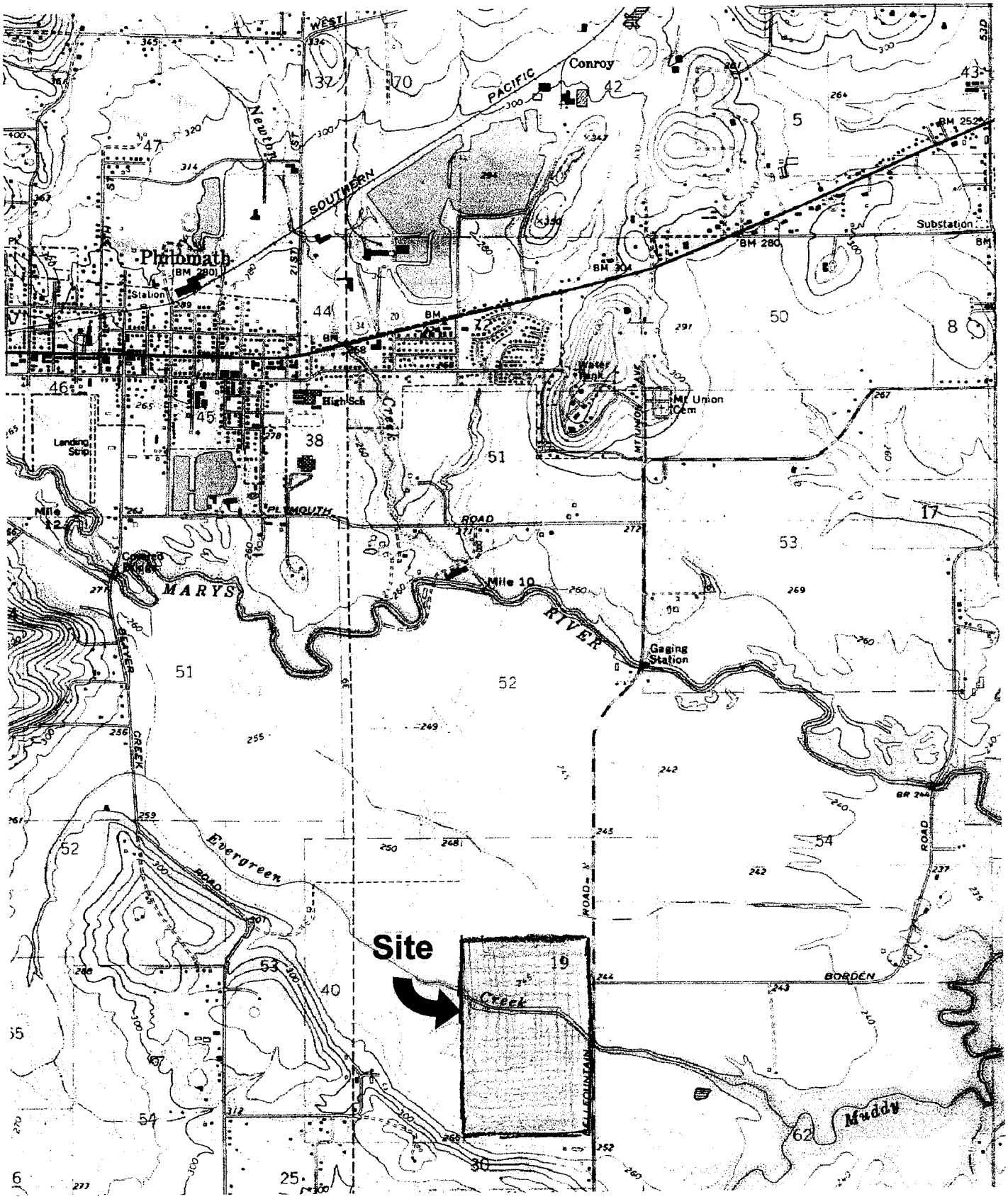
EXHIBIT A

LEGAL DESCRIPTION:

Lot 1, Lot 2, Lot 3 and Lot 10, in Section 19, Township 12 South, Range 5 West of the Willamette Meridian, Benton County, Oregon.

Also: Beginning at a stone at the Southeast corner of the Alexander Liggett Donation Land Claim No. 63, in Township 12 South, Range 5 West of the Willamette Meridian, Benton County, Oregon; and running thence South 87° 08' East 33.26 chains to an iron pin in the County road and on the West line of the Nicholas Ownby Donation Land Claim no. 62 at a point 10.812 chains North 0° 00 1/2' East of the most Northerly Northeast corner of the B. W., Wilson Donation land Claim No. 64, which pin is 30 feet South 87° 08' East of a 3/4 inch bolt; thence North 0° 00 1/2' East along the Claim line 14.418 chains to an iron pin on the line between Sections 19 and 30, 20.545 chains South 89° 27 1/2' West of the Northeast corner of Section 30, said Township and Range and which pin is 30 feet North 89° 25 1/2' East of a 1/2 inch iron rod; thence South 89° 27 1/2' West along the section line 33.254 chains to the East line of said Liggett Claim; thence South 0° 09' East 12.44 chains to the place of beginning.

Exhibit A



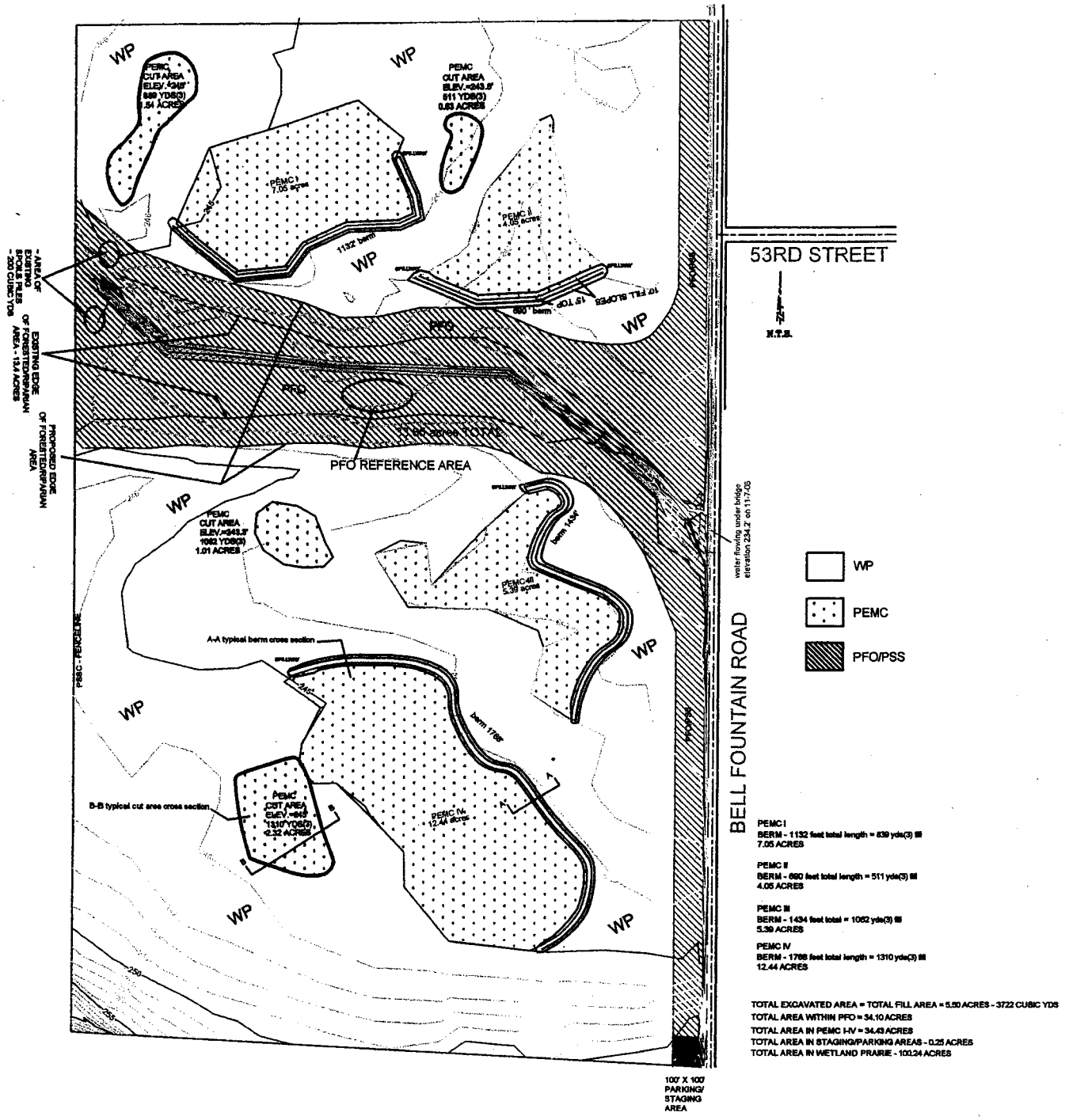
Evergreen Mitigation Bank

Site Location Map

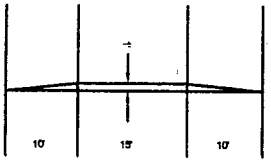
Exhibit A

"Exhibit B"
Mitigation site Plan

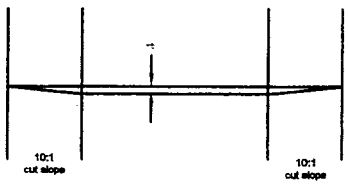
SITE PLAN
BELL FOUNTAIN RD.
AND 53RD ST.
JUNE 2, 2006



A-A typical berm cross section



B-B typical cut area cross section



berms have 10' slopes with a 15 foot wide flat top
the height is 1' from existing grade in middle

Exhibit B

Exhibit C

Evergreen Wetland Mitigation Bank

Final Instrument

By
Patrick S. Thompson, Consulting
Ridgeline Resource Planning

March, 2006
Revised June, 2006
Revised October 2006
Revised November, 2006

TABLE OF CONTENTS

LIST OF FIGURES

LIST OF ATTACHMENTS

EVERGREEN WETLAND MITIGATION FINAL INSTRUMENT

1.0 INTRODUCTION

The Evergreen Wetland Mitigation Bank (Bank) is located in Benton County, Oregon approximately one and one-half miles south of Philomath. It is located on the west side of the Bellfountain-Bordon Road intersection in T12S, R5W, Sec. 19, Tax Lot 700, (44° 30' 34", 123° 20' 27"). The proposed Bank consists of 174.52 acres with a combination of enhancement and restoration of cropped hydric soil. It is bordered on all sides by agricultural lands. The majority of the proposed Bank (161.12 acres) is currently in agricultural use for annual ryegrass seed production, the rest (13.4 acres) is forested riparian area surrounding Evergreen Creek. Evergreen Creek runs west to east through the center of the site. The Bank sponsors are Marvin and Cindy Gilmour, Patrick Thompson, Alton Sullivan, Steven Smith and Ray Fiori. The site is owned by A & D Sullivan Enterprises, Inc. and Marvin and Cindy Gilmour.

The location of this Bank is well suited for a mitigation bank. It is surrounded by exclusive farm use (EFU) zoning and natural wetland areas, yet is located within close proximity to the urban reserve for Corvallis and urban growth boundary for Philomath, both of which have current and planned future mitigation needs. The Bank has several small on site areas that are classified as jurisdictional wetland on the National Wetlands Inventory (NWI) map. The site has several unique components that make it especially valuable as a wetland mitigation bank. It is located approximately one-half mile west of the confluence of Evergreen Creek and Muddy Creek. The Muddy Creek floodplain is currently the focus of a multi-agency management plan to protect and enhance the riparian corridor between Finley National Wildlife Refuge and the Corvallis Willamette River area. The 174.52 acres of the proposed Evergreen Mitigation Bank which will restore and protect additional wetlands and a riparian corridor that will make a major contribution to this effort.

2.0 PROOF OF OWNERSHIP

Attachment 1 contains the buyer Settle Statement for the proposed bank. As soon as the final deed and ownership record is recorded it will be forwarded to the MBRT. The owners of this property are A & D Sullivan Enterprises, Inc. and Marvin and Cindy Gilmour.

3.0 ADJACENT PROPERTY OWNERS

Thomas and Kay Harding
6154 Bellfountain Road
Corvallis, OR 97333-9528

Mikelyn Hull
25715 SW Airport Ave.
Corvallis, OR 97333-9348

Herbert Seehafer
4924 Bellfountain Road
Corvallis OR, 97333-9527

E 4 Ranch Inc
P.O. Box 1396
Corvallis, OR 97339-1396

James and Robert Lindsay
30545 Lindsay Drive
Shedd, OR 97377-9728

Francis Wonderly
1305 12th St. SE
Salem, OR 97302-2814

4.0 PAST AND PRESENT USES OF SITE

Figure 4 includes a copy of The Nature Conservancy's Historic Vegetation Map based on the Government Land Office survey maps from 1851. This shows the site as a combination of wet and upland prairie. Aerial photographs of the site exist as far back as 1936 (See Figure 5) and indicate that the site and surrounding areas appear nearly identical to the current site. In 1936 the riparian area surrounding Evergreen Creek has far fewer trees but was similarly shaped and sized. It was slightly wider on the east side than it now exists. In the early years of the site (prior to 1946), it was most likely in row crops or pasture, as grass seed production had not yet begun in the valley.

Reconnaissance of the site and landowner records indicated no evidence of any type of hazardous materials on-site. The site was examined for evidence of areas of stressed or devoid of vegetation, drums, fill pipes, dump sites, stained soils, unusual odors, etc. No buildings have ever been known to occur on-site.

5.0 ADJACENT LAND USES

The Bank is located within an agricultural area that is zoned EFU (exclusive farm use) as are all of the adjacent properties. The zoning and comprehensive plan for this area provides for the necessary buffering and long term hydrologic protection that are vital to a wetland mitigation bank.

The Corvallis Airport is located 2.2 miles east of the proposed Bank. Federal Aviation Administration (FAA) *Advisory Circular 150/5200-33* provides for the protection from hazardous wildlife attractants near airports. Wetlands can be considered wildlife attractants. The FAA recommends a 10,000 foot radius between a wildlife attractant and airport aircraft movement areas, landing ramps or aircraft parking areas. A distance of five miles is recommended from approach or departure air space if the wildlife attractant may case hazardous wildlife movement into or across the approach or departure airspace. The proposed Bank is 11,600 feet from the airport, which is outside of the 10,000 feet radius but within the 5-mile zone.

The Bank site is currently a ryegrass field which is a larger attractant of geese than the native wetland prairie species will be. Additionally, the Corvallis airport runways are oriented north to south and the proposed Bank is located west of the airport. This means that the approach and departure air space is north and south of the airport not to the west.

6.0 SITE ASSESSMENT

6.1 Cowardin and Hydrogeomorphic Wetland Classes

There are several areas of existing wetlands (Figure 1) which are listed on the Corvallis Quadrangle, National Wetlands Inventory map on the Bank. The listed wetlands identified by their Cowardin Classifications include areas of PFOA - Palustrine/ Forested/Temporarily Flooded and PEMAd -Palustrine/Emergent/Temporarily Flooded/Partially drained or ditched.

The wetlands on the Bank site will be a combination of Palustrine Emergent and Palustrine Forested and Scrub/Shrub. The Hydrogeomorphic class that will be developed is slope/flat. The existing riparian forest zone has a hydrogeomorphic class of riverine flow-through.

6.2 Vegetation

The restoration portion of the Bank is currently used for agricultural purposes for annual ryegrass seed. The ash forested riparian area has existed at least since1936, but has changed in its vegetation composition and areal extent over the years. There are numerous very large Oregon ash (*Fraxinus latifolia)* within this area. Other overstory species include both English and Black hawthorn (*Crataegus monogyna and douglasii*), cascara (*Rhamnus purshiana*), and wild cherry (*Prunus ssp.*)

The understory is a combination of shrubs and herbaceous species. A recently completely Riparian Area Stem Density Survey conducted by Ray Fiori found the following scrub/shrub species present: Indian plum (*Oemleria cerasiformis*), poison oak (*Toxicodedron diversilobum*), multi-flora rose (*Rosa multiflora*), trailing blackberry (*Rubus ursinus*), Himalayan blackberry (*Rubus discolor*), Nootka rose (*Rosa nutkana*), Baldhip rose (*Rosa gymnocarpa*), common snowberry (*Symphoricarpos albus*), service berry (*Amelanchier alnifolia*), clustered rose (*rosa pisocarpa*), sweetbrier rose (*Rosa eglanteria*), Pacific ninebark (*Physocarpus capitatus*) and Pacific willow (*Salix lucida*).

6.3 Soils

According to the Benton County Soil Survey the site is composed primarily of Dayton silt loam (53) with smaller amounts of Coburg silty clay loam (50), Amity silt loam (8) and Conser silty clay loam (52) (Figure 2 - Soils Map). Table 2 summarizes each of the soils main characteristics.

Table 1 - Site Soil Characteristics - Evergreen Mitigation Bank

Soils	Drainage	Permeability	Runoff	Hydric
Dayton silt loam	Poorly drained	Very slow	Slow to very slow or ponded.	Yes
Coburg silty clay loam	Moderately well drained	Moderately slow	Slow	No - Inclusions of Conser and Malabon
Amity silt loam	Somewhat poorly drained	Moderately slow	Slow	No - Inclusions of Concord and Dayton
Conser silty clay loam	Poorly drained	Slow	Slow	Yes

6.4 Hydrology

The Bank is located in the 100-year floodplain of Muddy Creek which is located one-half mile east. The Bank lies in an area of varying topography of a mixed broad lowland alluvial terrace. Evergreen Creek flows through the center of the site where approximately ½ mile east of the site it flows into Muddy Creek. Muddy Creek then flows northeast to join with the Marys River, which flows into the Willamette River in Corvallis. The site is nearly flat with an average elevation of 245 feet msl. The only significant topographic feature on site is Evergreen Creek. Evergreen Creek itself is slightly incised with a stream bottom between four and five feet below top of bank. It has been cleaned in the past with the excavated materials sidecast along its top of bank. The stream varied in width from approximately 15 feet to 35 feet. There are a series of old shallow braided side channels within the riparian zone which in the past appeared to have carried water during peak flows, but have been disrupted due to side cast material during prior cleaning of the creek.

The topography of the surrounding area is mixed. Just south and southwest of the Bank is an escarpment with elevation change to the top of approximately 90 feet. The Bank receives runoff from this upland slope. To the north and east of the Bank is nearly flat floodplain clear to the Marys River to the north and Muddy Creek to the east.

Most of the stream flow in this area occurs during the winter and spring coinciding with the majority of the area's precipitation and runoff from the adjacent upland areas. Even though Evergreen Creek is designated as a perennial stream it can dry up in the late summer early fall as it did in 2005. A portion of the stream is currently holding water behind a beaver dam built on site. The water is stagnant however with no flow into or out of the ponded portion.

Floods in December 2005/January 2006 provided an excellent view into the site's current flood water flows and its post-flooding recoupment time. On the north side of Evergreen Creek the majority of the surface flood water came either from direct precipitation or from Marys River overflow. Draining of the surface water was via Evergreen Creek, the road ditch and overland surface flows back to the Marys River. On the south side of Evergreen Creek the surface flood waters came from direct precipitation or overland flow from the adjacent hillside. The flood waters receded from the site via Evergreen Creek and the road side ditch.

6.5 Wetland Determination/Delineation

The Natural Resources Conservation Service conducted a wetland determination of the property now proposed for the mitigation bank. The entire parcel was determined to be (PC) or prior converted. A wetland delineation was conducted by Patrick S. Thompson Consulting in March 2006. Concurrence on the delineation was received on August 10, 2006. The finding of the delineation was that the entire site is considered to be wetland or cropped hydric soil.

Dana Field of the Department of State Lands stated that, "Areas of cropped hydric soils may receive 2:1 enhancement ratio, subject to approval of the MBRT". The remaining portion of the Bank is forested wetland (approximately 13.4 acres) and will be enhanced.

6.6 Threatened and Endangered Species

The Evergreen mitigation site has significant potential to contribute to recovery of Federally Listed species occurring within the Mary's River watershed, however, no species are either present or using the site in its present condition.

The areas proposed for restoration are currently in annual ryegrass production. The site has been intensively managed for seed production for at least the last 20 years. There is one remnant riparian area remaining along Evergreen Creek. This area has the most potential to support native plant species and could be used as a reference site for expansion of riparian habitat. At the request of Pat Thompson and Marvin Gilmore, USFWS biologist, Steven Smith surveyed the entire property in the fall 2005 and again in the spring of 2006. No evidence of Federally Listed species was found.

The following summarizes the known locations of Federally Listed plant, butterfly, fish and wildlife populations occurring within the Muddy Creek sub-basin of the Mary's River watershed. These populations are located both on Finley National Wildlife Refuge and on private lands throughout the basin (personal communication with Mikki Collins & Steven Smith, USFWS).

Populations of Nelson's checkermallow, Bradshaw's desert parsley, and Willamette daisy are located on private property within two miles of the proposed mitigation site. Additional populations are found within the Willamette River Floodplain Research Natural Area (RNA) on Finley National Wildlife Refuge located approximately 10 miles south of Corvallis. Upland prairie sites containing Kincaid's lupine and Fender's blue butterfly are located approximately three air miles northwest within the Philomath Urban Growth boundary.

Oregon chub and upper Willamette winter steelhead occur with Muddy Creek and some of its lower tributaries. NOAA Fisheries lists Muddy Creek to Beaver Creek as Essential Salmonid Habitat (ESU). The proposed bank site is located along Evergreen Creek just outside the designated ESU. Evergreen Creek does support coastal cutthroat trout. Oregon Chub occur in Bull Run Creek (~ 1mile south), Beaver Creek (5 miles south), and on Finley NWR (7 miles south) (Paul Shearer, ODFW & Steven Smith USFWS, personal communication).

An active bald eagle next is located on Finley NWR approximately 7 miles southeast of the proposed Evergreen Bank.

6.7 Hydrogeomorphic (HGM) Based ASSESSMENT

This bank site has the potential to restore and create a variety of high quality wetland functions including wildlife habitat, on-site storage and filtration of precipitation and surface water runoff. The wetlands will capture and retain precipitation, replacing and off-setting the effects of the existing manmade drainage on and surrounding the site, that promotes fast drainage which contributes to the flood conditions and decreases groundwater recharge. The Bank will temporarily store water, thereby increasing the retention time and allowing the vegetation and soils to interact with any possible nutrients they might contain in order to act as a filtration system.

A hydrogeomorphic (HGM) based assessment of the site was completed, assessing how the site functions as a wetland now and how we anticipate it will look and function as a wetland ten years from now. Table 2 shows the ten HGM functions that are analyzed for the slope/flat wetland and 12 functions for the forested wetland. All functions, assessed using both the reference and judgmental methods, have increased in value as a result of the creation of the Evergreen Mitigation Bank. The values in columns 2 and 3 were calculated using the referenced-based method standardized to the highest functioning capacities for slope/flat sites. The values in columns 4 and 5 were determined using the judgmental method for slope/flat sites. The values in columns 6 and 7 were also determined using the judgmental method but only for the forested portion of the site. Both assessment methods are based on the Guidebook for Hydrogeomorphic (HGM) -based Assessment of Oregon Wetland and Riparian Sites by Paul Adamus and Dana Field.

Table 2- HGM for Slope/Flats Pre- and Post- Construction (HFR Calculation)

Function	REFERENCED-BASED Slope/Flat		JUDGMENTAL METHOD Slope/Flat		JUDGMENTAL METHOD Forested	
	Existing	10 years after construction	Existing	10 years after construction	Existing	10 years after construction
1. Water Storage & Delay–This has risen substantially due to the longer and larger quantity of inundation of the site.	0.15	0.75	0.6	0.9	0.6	0.8
2. Sediment Stabilization & Phosphorus Retention-- This increase is due to taking the site out of agricultural production, elimination of plowing, planting a permanent cover, and slowing the water flow through the site.	0.58	0.79	04	0.8	0.6	0.8
3. Nitrogen Removal--Nitrogen removal has increased by increasing the percentage of the land that is seasonally inundated and by eliminating the agricultural applications of nitrogen to the site.	0.67	0.84	0.3	0.6	0.5	0.7
Thermoregulation–This small increase is due to the expected increase in the forest canopy which will further shade and cool the surface water.					0.4	0.5
4. Primary Production--The primary production has increased due to the conversion of the annual crop (ryegrass) into perennial vegetation that will accumulate organic matter.	0.42	0.62	0.3	0.6	0.5	0.7
Anadromous Fish Habitat Support–Fish habitat support has increased due to an increase in the suitable substrates for spawning and feeding, an increase in cover and an increase in flood water storage duration.					0.4	0.5
5. Invertebrate Habitat Support--This has increased due to the increase in forms of vegetation, the seasonal inundation, pooling and associated site hummock, and a decrease in soil compaction.	0.28	0.38	0.1	0.5	0.5	0.6
6. Amphibian & Turtle Habitat-- This has increased slightly due to the elimination of the agricultural practices, increased hydrology, and perennial vegetation.	0.74	0.80	0.2	0.5	0.5	0.6

7. Breeding Waterbird Support-- Breeding waterbird support has risen dramatically due to presence of at least ½ acre of seasonal inundation through the breeding and nesting season where previous there had been only a very small amount impounded in a deeper pool of the intermittent stream on site.	0.00	0.78	0.1	0.6	0.3	0.4
8. Wintering & Migrating Waterbird Support--This has increased due to the addition of fall winter and spring feeding and refuge potentials through seasonal inundation including increase in the percentage and distribution of pools, changing water levers, hummocks, shorebird scrapes and mudflats.	0.8	1.00	0.4	0.7	0.6	0.7
9. Songbird Habitat Support--This has increased due to the elimination of agricultural practices and increase in perennial vegetation and cover.	0.8	0.89	0.1	0.5	0.5	0.6
10. Support of Characteristic Vegetation--This has increased due to the replacement of agricultural products and practices with native herbs and woody plants characteristics of wetlands. It has also increased due to a decrease in soil compaction, annual mowing, and non-native herbaceous layer species and percent cover.	0.57	0.93	0.2	0.6	0.5	0.6

7.0 MITIGATION BANK SITE PLAN

The site plan and planting plan for the Bank are included as Figure 3. Development of the Bank will be primarily through the restoration of previously drained wetlands (cropped hydric soils - 161.12 acres) and the enhancement of the existing ash riparian area (13.4 acres). In the past, the agricultural portion of the site was drained through a combination of a perimeter road side ditch and seasonal internal shallow drainage ditches which diverted water past and through the site through Evergreen Creek.

The ash riparian area surrounding Evergreen Creek is surprisingly intact but has suffered from agricultural ditching, animal grazing and drainage efforts. Drainage efforts have included deepening of Evergreen Creek which has reduced and eliminated the network of shallow braided channels that at one time occupied the ash riparian surrounding it. This deepening of the creek allowed the entire site to drain quicker and reduced the water holding capacity of the riparian area. Over time this has modified, in particular the emergent and shrub layers allowing the encroachment of the non-native invasives Himalayan blackberry and reed canary-grass (*Phalaris arundinacea*). English hawthorn and wild cherry threaten to take over much of the canopy. From a vegetation stand point, the main enhancement work will focus on hand removal of these non-native species.

Plans for the site including widening the riparian area to include a width of 180 feet from the top of bank on each side of Evergreen Creek and restoring the braided side channels to play a more active part of the wetland system. The braided channels associated with Evergreen Creek are important foraging and refuge habitat for a multitude of species during moderate to high flow events. To restore this function approximately 200 yd^3 of fill material will be removed to increase the frequency/duration of inundation with the excess material being blended into the toes of the levees. From a landscape perspective, this activity will have no impact on large flood events, but it will increase the creeks buffering capacity during moderate flows, and greatly increase connectivity of habitat types. Do to the sensitive nature of the habitat and extremely limited mobility, a low ground pressure skid steer will be utilized in most areas, with others being dug by hand with a shovel to remove fill.

The site will also be planted with a 100-foot forested and scrub/shrub wetland vegetation buffer along Bell Fountain Road. This will help shield wildlife using the site from the road traffic.

The agricultural portion of the site will be restored primarily to a wet prairie system with some interspersed seasonal swales spreading out and passing through wet marshy areas. This will be accomplished by creating wide shallow berms following the natural topographic micro-highs and lows of the site. The excavation for the berms will create slightly lower areas, which will retain the site's hydrology for a longer period of time.

The restored and enhanced wetlands will include semi-permanently and seasonally flooded, and saturated palustrine emergent, scrub-shrub and forest wetland areas. The hydrogeomorphic classification will be primarily slope/flat with a riverine flow through component. The water sources will consist of groundwater, surface water and precipitation and the hydrodynamics will be both horizontal

and vertical movement. The restoration of this wetland area will allow the system to function more naturally, as it once did in the past, and to add to the extensive natural areas currently under management throughout the Muddy Creek watershed.

7.1 Water Sources

The hydrologic sources for the wetlands will be seasonal high groundwater, precipitation, overland flow from the Marys River and surface water. Water will be kept on site through a combination of minor excavation and low berm building. The berms will have a natural appearance with an average height of 6 to16 inches and a width of approximately 25 feet to provide additional areas for facultative and wetter herbaceous vegetation to become established. The minor excavation will be done to lower the areas of higher elevation, for berm material and to create areas where the natural hydrology will be allowed to remain on site for a longer period of time. The surface water runoff from the hills to the south of the site in addition to a seasonal high water table normally saturates or inundates the site during the winter and early spring months.

7.2 Vegetation

The Bank will be seeded with a wet prairie seed mixture for a total of 9.25 pounds per acre and an emergent marsh seed mixture for a total of 3.75 pounds per acre. The wet prairie will be seeded with a minimum of ten wetgrass prairie species. Figure 3 includes a complete planting plan for each of these wetland types. Other native species will be planted as available. Natural recruitment of other species from a historical seedbank is also anticipated.

The forested and shrub areas will be planted with a mixture of cuttings or plants of native hardwood and shrubs species as indicated on the planting plan (See Figure 3).

7.3 Grading and Erosion Control

Surface grading work done at the Bank will be conducted with a bull dozer, scraper and farm tractor. The sponsors have all the equipment needed for grading, back-blading, seeding, and cultivation. Any excavation work done on-site will occur when the site is dry with no discharge. Immediately after the excavation work is completed, the Bank will be seeded with a native grass mixture to assure a full cover prior to the rainy season. In the event unseasonable conditions persist during this period, silt fencing, straw bales and other forms of erosion control will be used to stop any off-site sedimentation problems. The complete Pollution and Erosion Control Plan is included as Attachment 2.

7.4 Operations Schedule

Restoration activities will begin in August 2006 with burning of the residual crop stubble. Surface grading will follow. Site preparation will occur in fall 2006 to eliminate all sprouting

non-desirable species. Planting with wetland species will occur when proper environmental planting conditions exist, hopefully in fall 2006. The Bank will be surveyed after the construction phase is completed, and as-built drawings prepared.

The grading and planting operation will be overseen by a wetland specialist, horticulturalist, or biologist selected by the Bank sponsors. During and after grading and planting, the Bank will be frequently checked by the selected individual for early detection of any potential problems.

7.5 Effect on Neighboring Properties

The Bank is located within an agricultural area that is zoned EFU (exclusive farm use) as are all of the adjacent properties. Attachment 3 is a recent aerial photograph of the site. The zoning and comprehensive plan for this area provides for the necessary buffering and long term hydrologic protection that are vital to a wetland mitigation bank

As a result of the public notice process a variety of concerns were initially voiced from several citizens. Attachment 4 includes a copy of the letter sent to each person who responded to the public notice. This letter details each of the concerns and how they were handled.

The Corvallis Airport is located 2.2 miles east of the proposed Bank. Federal Aviation Administration (FFA) *Advisory Circular 150/5200-33* provides for the protection from hazardous wildlife attractants near airports. Wetlands can be considered wildlife attractants. The FAA recommends a 10,000 foot radius between a wildlife attractant and airport aircraft movement areas, landing ramps or aircraft parking areas. A distance of 5 miles from approach or departure air space is recommended if the wildlife attractant may case hazardous wildlife movement into or across the approach or departure airspace. The proposed Bank is 11,600 feet from the airport, which is outside of the 10,000 feet radius but within the 5-mile zone. The Bank site is currently a ryegrass field which is a larger attractant to geese than the native wetland prairie species will be. Additionally, the Corvallis airport runways are oriented north to south and the proposed Bank is located west of the airport. This means that the approach and departure air space is north and south of the airport not to the west.

7.6 Environmental Quality Discussion

Drainage from the Mitigation Bank flows to Evergreen Creek then to Muddy Creek both of which are located within the Marys River Watershed. Both Muddy Creek and the Marys River are water quality limited streams under the Clean Water Act, Section "303D Listing". Muddy Creek is listed due to temperature and the Marys River due to fecal coliform, temperature and dissolved oxygen. The Bank could have a positive affect on the fecal coliform parameter as the wetlands will slow down any surface water flows within the Bank allowing bacteria to be trapped in the wetland sediments, decreasing the amounts of fecal coliform. The type of wetlands being developed on site will probably not help with the DO, as wetlands without turbulent water to increase aeration tend to decrease rather than increase the DO. However,

an increase in DO is not anticipated because of the creation of the bank. Additional riparian shading for Evergreen Creek is planned which will help decrease the temperature of water in Evergreen Creek. The majority of the Bank will not play a significant role however, due to the lack of shading the wet prairie areas offer.

The Bank is outside the 200-yard required buffer area required by the Washington Toxic Coalition vs. EPA decision. As extra safeguards any pesticide use on site will be in compliance with the Washington Toxic Coalition vs. EPA decision.

Creation of the Bank will reduce herbicide, pesticide and nitrogen input to Evergreen Creek. The agricultural lands currently receive herbicide, pesticide and fertilizer (source of nitrogen) applications two or three times yearly. The agricultural lands will be replaced with high quality wetlands that will only receive highly controlled spot herbicide applications. This will not only decrease the direct input of herbicides, pesticides and fertilizer, but the wetlands will also function on a long-term basis to treat water from adjacent agricultural areas. Any herbicide applications will be done by a licensed private pesticide/herbicide applicator with the Oregon Department of Agriculture.

7.7 Weed Management Methodology

Weed management is not anticipated to be a major problem with this Bank due to the knowledge, familiarity with the site, and wetland and farming management skills of the Bank's sponsors, who collectively have over 20 years of wetland and 60 years of farming management experience.

One of the key components of weed management is the prevention of weeds. This will be done in a systematic way by first removing through a herbicide application program problematic species. The weed management program then centers on identifying individual species and noting their location over time, so that their removal or spread can be closely monitored. The weeds will be prioritized to assure that highly competitive weeds will be on a closely monitored status while non-competitive weeds will be less of a factor. As species are found that may be new to the sponsors, they can look to local experts to help in the identification and best methods of control. The actual control of the weeds can be done through a combination of species specific spot herbicide application, mowing, controlled burning, and physical removal of individual targeted plant species. Long term monitoring of weedy species will be done through their identification and mapping, keeping the records over years to follow patterns and proven methods of abatement (adaptive management).

Weed control will be a long term effort by the Bank's sponsor, but will be much less of an effort after the first few years when the desirable wetland species have had a chance to establish themselves in the areas where the weeds have been kept in check.

Long term maintenance of the site is fully described in Exhibit H of the MOA.

8.0 CONTINGENCY PLANS

If during monitoring inspections and surveys, failures to meet one or more performance measures are probable, an analysis will be conducted to determine the cause or causes of the possible failure. This determination will be made by the mitigation bank staff which will include a wetland specialist, the owners, and any other specialist deemed necessary for the specific issue. This team will recommend to the MBRT, an immediate action plan that can be implemented to bring the Bank effort back on track to meet the performance measures. Examples of possible adaptive management actions that could be taken as contingency efforts include; replanting, plant species changes or additional limited excavation.

The owners of the Bank will be ultimately responsible for completing the necessary action to assure success of the remediation plan. Prior to the sale of credits in the Bank, the sponsors will guarantee that the necessary finances will be made available to successfully execute this mitigation plan and any contingencies which might arise through the submittal of financial assurance, until such time that success is ensured and DSL and the ACOE agree that bond release is warranted.

The responsible parties who will implement and provide for monitoring the success of the corrective actions are indicated below:

Name	Address	Phone
Marvin and Cindy Gilmour	6001 NW Gilmour Lane Albany, OR 97321	541-928-2507
Patrick S. Thompson	P.O. Box 1240 Marcola, OR 98454	541-933-3318
Alton Sullivan	P.O. Box 2118 Lebanon, OR 97344	541-979-6456
Ray Fiori	29594 Camp Adair Road Monmouth, OR 97361	541-760-1777
Steven P. Smith	P.O. Box 664 Philomath, OR 97370	541-929-6341

9.0 CONSISTENCY WITH LOCAL COMPREHENSIVE PLAN

Wetland mitigation banking is an allowed use in the EFU zone in Benton County. A Development in the Floodplain Permit has been applied for and obtained from the Benton County Planning Department. In addition to this, Benton County requires a Road Approach permit which has also been obtained. Copies of both permits are included as Attachment 5.

10.0 WETLAND CREDITS AND BANKING SYSTEM

The credit banking system for the Evergreen Mitigation Bank site will be based on DSL's mitigation ratios as specified in OAR 141-85-135. A mitigation credit is the unit of measurement describing

wetland impact compensation requirements. For each acre of wetland impact, one mitigation credit is required and can be purchased from the Bank to satisfy the impact requirement. Wetland credits will be offered in the approximate ratios of 85% - palustrine emergent, 15% - palustrine forested shrub/shrub. We are planning on generating wetland credits for the restoration of the cropped hydric soils and enhancement of the existing ash wetland.

Restoration	160.87 acres		@ 2:1 ratio =	80.43 credits
Enhancement	13.40 acres	Enhancement	13.4 acres @	
New parking	0.25 acres	3:1 ratio =	4.46 credits.	
Total Site	**174.52 acres**			
		Total Credits		**84.89 credits.**

Restoration 160.87 acres

Prior to each credit sale, the sponsor will be notified by either the permitting agency or the applicant that the Evergreen Wetland Mitigation Bank has been approved for use for a removal/fill permit application or resolution of a removal/fill violation. The Bank sponsor will notify the permitting agency in writing (fax is acceptable), within two business days of the sale of the credits. The notification will include the number of credits sold, the name and address of the person or entity who purchased the credits, the project location, the date of purchase and the state and/or federal identification number. The Bank sponsor will submit an Annual Report to DSL and ACOE comprised of the monitoring report documenting the performance of the mitigation progress, an accounting of credits earned and sold and other data the MBRT may request throughout the year.

11.0 PROJECT COSTS & FINANCIAL RESOURCES

Financial assurance of a sufficient amount to secure the advance release of credits will be posted before the regulatory agencies make the first credit release. The amount of the bond is based upon an evaluation of the mitigation site and the likelihood that an individual or a combination of factors influencing the Bank could fail. Table 3 includes a summary of each of these costs along with a built-in 15% contingency. The total amount of bond suggested is $228,770. The schedule of financial assurance release is included in the MOA Section IV. D.

EVERGREEN - FINANCIAL ASSURANCE FORMULA

	Activity	Materials cost/acre	Planting cost/acre	Times	Excavation per yd3	Acres	Total yd3	Total ($)	Amount/acre REDUCTION	Amount/acre HELD
Area 1	Land Cost	$2,700.00				174.5		$471,150		
	Delineation	$10,000.00						$10,000		
	subtotal cost per acre = $2757								$2,682	$75
Area 2	Land survey	$5,000.00		1				$5,000		
	Autocad, Engineering and Design	$15,000.00		1				$15,000		
	subtotal cost per acre = $115								$65	$50
Area 3	Permits and Consulting	$40,000.00						$40,000		
	Legal Fees	$5,000.00						$5,000		
	subtotal cost per acre = $258								$58	$200
Area 4	Excavation				$5.00		3,443.0	$17,215		
	subtotal cost per acre = $99								$74	$25
Area 5	Site Prep	$20.00	$6.00	2		161.0		$8,372		
	Prairie Planting	$135.00	$22.00			141.3		$22,184		
	Riparian Planting	$225.00	$1,050.00			21.0		$26,775		
	Monitoring	$17.25		5		174.5		$15,051		
	subtotal cost per acre = $415								$0	$415
	Subtotal							**$635,747**		
Area 6	Contingency	15%	Possible remedial work					$95,362		
	subtotal cost per acre = $546								$0	$546
	Total Costs							**$731,109**	**$2,879**	**$1,311**

Total cost for Conventional Mitigation $731,109 ($4,190/acre)
Proposed Evergreen Performance Bond* $228,770 ($1,311/acre) ($1311 acre x 174.5 acres = 228,770)*

Prior to any credit release the following series of actions and checks and balances will have occurrred, lowering the potential risks of failure, and thereby reducing the need for a performance bond.

	BOND REDUCTION DESCRIPTION	WHY
Area 1	Land costs and initial delineation complete. Funds held to redelinate if corrective actions required	Wetland hydrology is proven, showing wetlands can be created with proper planting and management. Land cost no longer an issue.
Area 2	Initial survey, engineering and design costs have been completed, corrective action funding held	Team of specialists (MBRT) has agreed to the design based on the site, topographic survey and engineered plans.
Area 3	Permits have been obtained, consultant work partially completed	ACOE and DSL have reviewed restoration plans and have issued legally binding permits, and Signed MOA.
Area 4	Initial excavation costs complete, corrective excavation funding held	MBRT will have inspected the permitted excavation and as-built drawings and made recommendations.
Area 5	Site prep, planting and monitoring held	Hold all until full performance measures are attained.
Area 6	Contingency held	Contingency held until all performance measures are attained.

Other items to note:
1. Final 10% of credits will be held until the long term management plan is approved by the MBRT, funded and in place.
2. Mitigation Bank team is experienced and has documented multiply successes with mitigation banking and wetland mitigation.

12.0 PUBLIC FUNDING SOURCES

All funding for this project will be supplied by the Bank sponsors.

13.0 HUNTING RESTRICTIONS

Any hunting will comply with all State and Federal regulations.

14.0 REFERENCES

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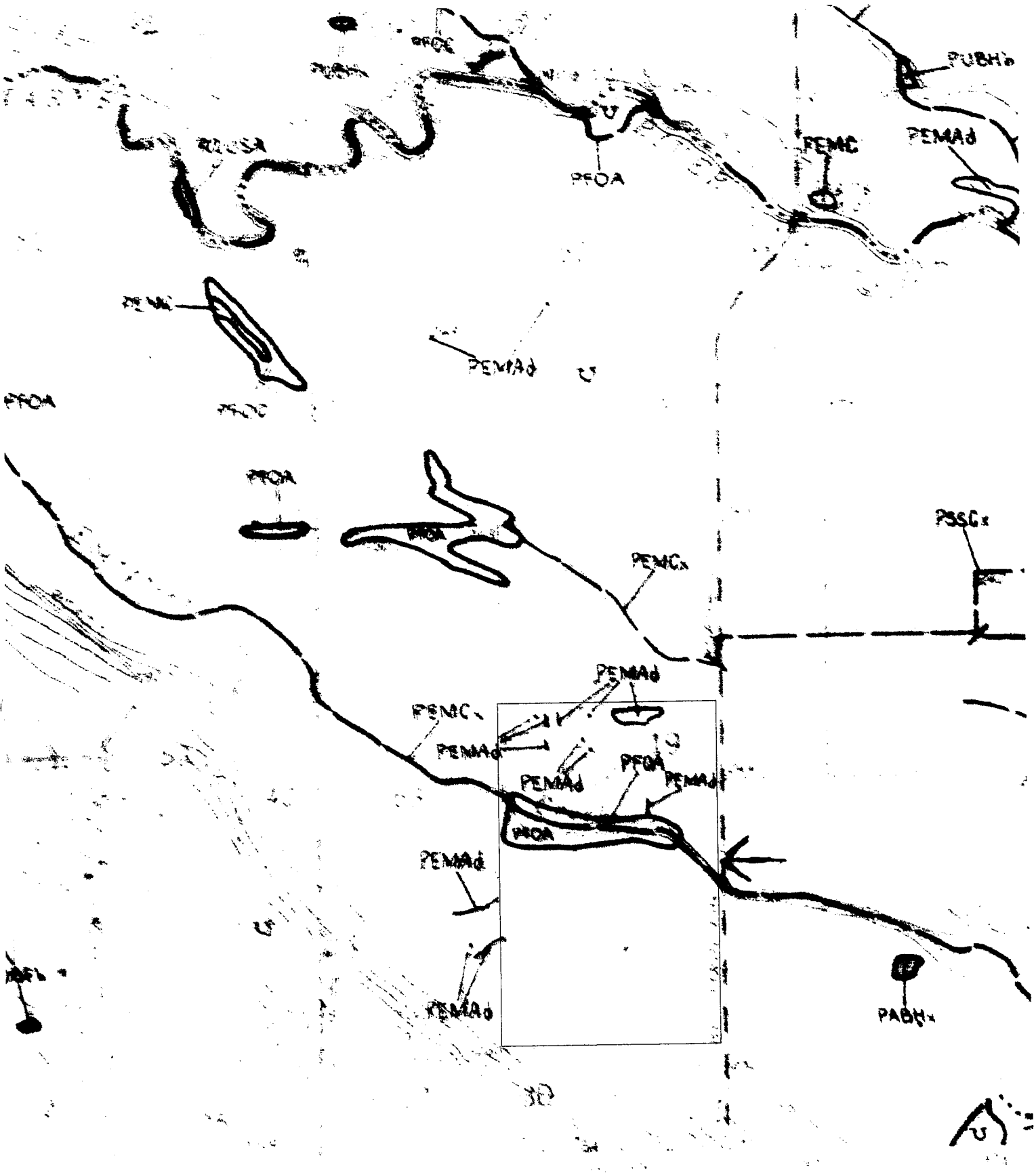
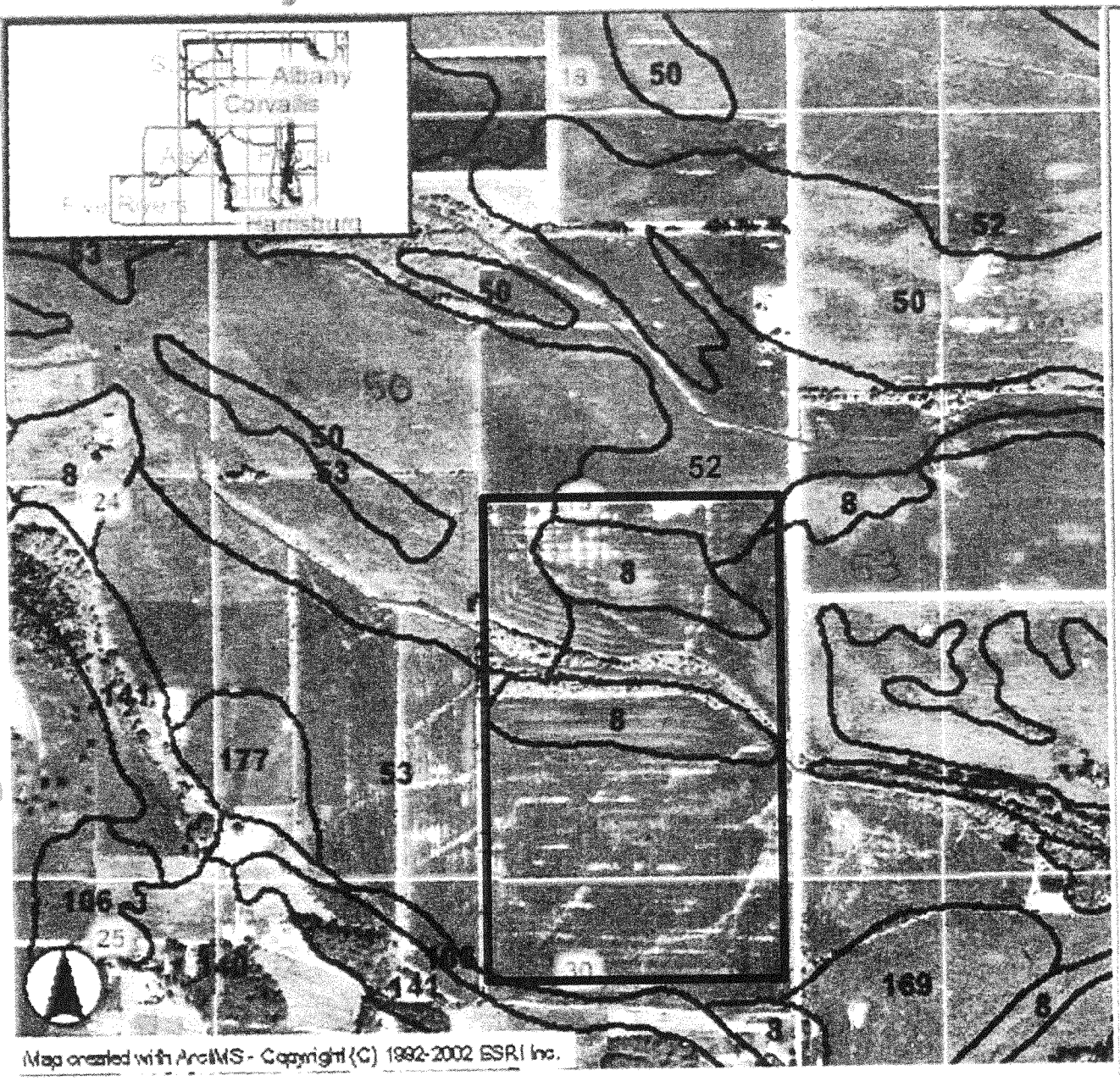


Evergreen Mitigation Bank

NWI Map

Figure1



Evergreen Mitigation Bank Soils

8 - Amity Silt Loam 0-3%

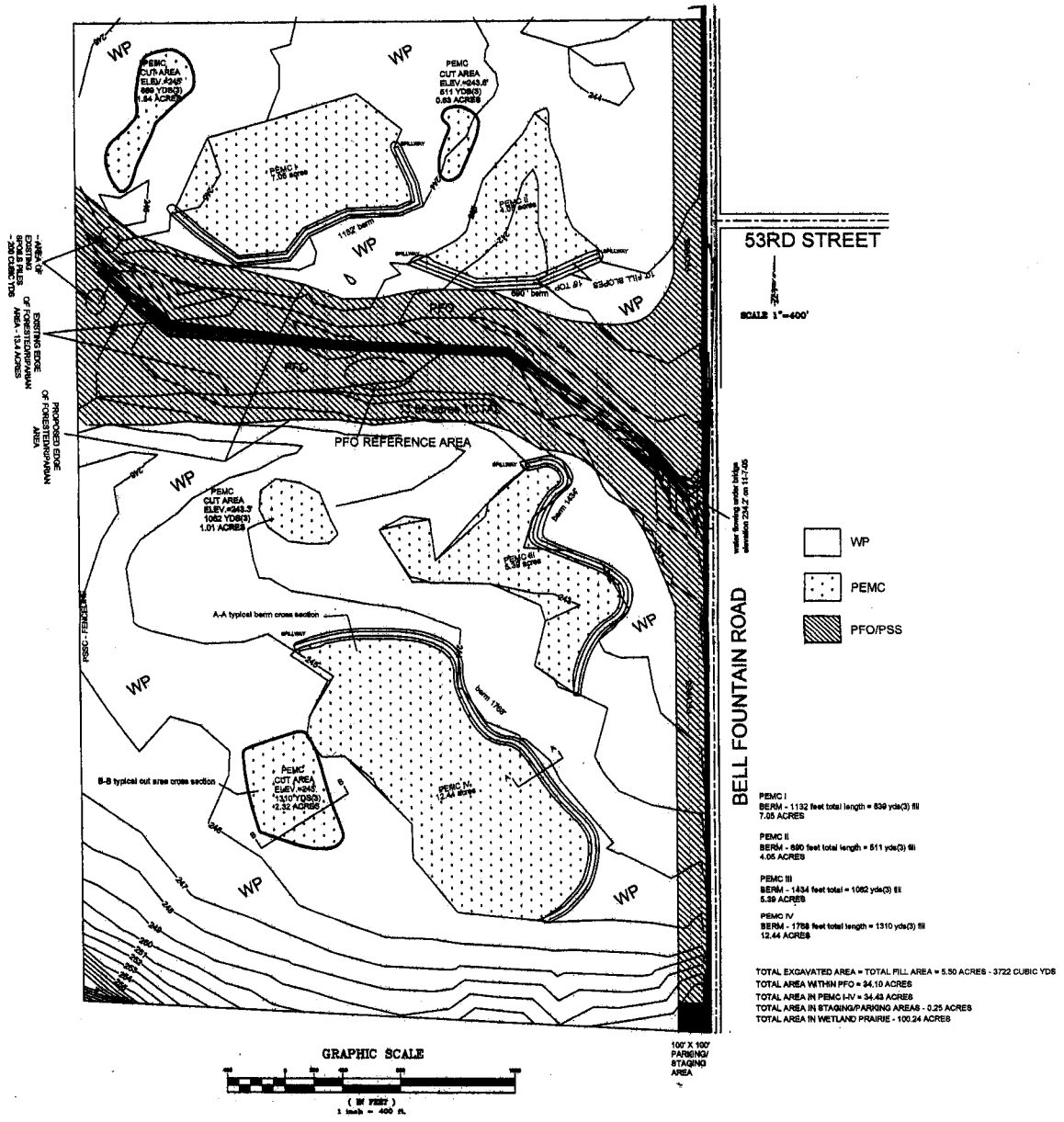
50 - Coburg Silty Clay Loam, rarely flooded, 0-3%

52 - Conser Silty Clay Loam 0-2%

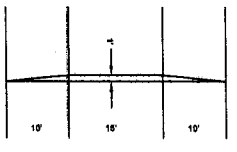
53 - Dayton Silty Loam 0-2%

Figure 2

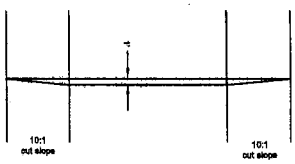
SITE PLAN
BELL FOUNTAIN RD.
AND 53RD ST.
JUNE 2, 2006



A-A typical berm cross section



B-B typical cut area cross section



berms have 10' slopes with a 15 foot wide flat top
the height is 1' from existing grade in middle

FIGURE 3

Evergreen Mitigation Bank Planting Plan

Wet Prairie Planting (106.62 acres)

Species				
Common Name	**Latin Name**	**Rate (LBS/A**	**Total Amount**	**Status**
California oatgrass	*Danthonia Californicus*			
Thick spike bentgrass	*Agrostis exarata*	0.25	26.75	fac
Tufted hairgrass	*Deschampsia cespitosa*	0.5	53.5	facw
Meadow barley	*Hordeum brachyantherum*	2	214	facw
Annual hairgrass	*Deschampsia danthonioides*	0.25	26.75	facw-
American slough grass	*Beckmannia syzigachne*	3.5	374.5	obl
Slender hairgrass	*Deschampsia elongata*	0.25	26.75	facw-
Willow weed	*Epilobiun ciliatum*	0.5	53.5	facw-
Toad rush	*Juncus Bufonius*	0.25	7.25	facw+
Dowinia	*Dowingia elegans*	0.25	7.25	obl
WV gumweed	*Grindelia intergrifolia*	0.25	7.25	facw
Popcorn flower	*Plagiobothrys figuratus*	0.25	7.25	facw
One-sided sedge	*Carex unilateralis*	1	107	facw
Total		9.25	912	

Emergent Marsh (34.3 acres)

Species				
Common Name	**Latin Name**	**Rate (LBS/A**	**Total Amount**	**Status**
Small fruited bull rush	*Scirpus microcarpus*	1	29	obl
Waterplantain broadleaf	*Alisma plantago-aquatica*	0.25	7.25	obl
Waterplantain narrowleaf	*Alisma gramineum*	0.25	7.25	obl
Bur-reed	*Sparganium emersum*	1	29	obl
Popcorn flower	*Plagiobothrys figuratus*	0.25	7.25	facw
Dowinia	*Dowingia elegans*	0.25	7.25	obl
Spike rush	*Eleocharis palustris*	0.25	7.25	obl
Rice cutgrass	*Leersia oryzoides*	0.5	14.5	obl
Total		3.75	109	

Riparian Planting (34 acres)

Species				
Common Name	**Latin Name**		**Total Amount**	**Status**
Oregon ash	*Fraxinus latifolia*		2000	facw
Red osier dogwood	*Cornus sericea*		450	facw
White alder	*Alnus rhombifolia*		1500	facw
Pacific crabapple	*Malus (pyrus) fusca*		450	fac+
Indian plum	*Oemleria cerasiformis*		450	facu
Snow berry	*Symphoricarpos albus*		450	facu
Sitka willow	*Salix sitchensis*		450	facw
Spirea	*Spiraea douglasii*		500	facw
Nooka rose	*Rosa nutkana*		450	fac
Clustered rose	*Rosa pisocarpa*		450	fac
Pacific nine bark	*Physocarpus capitatus*		450	facw -
Red flowering currant	*Ribes sanguineum*		450	nl
Gooseberry	*Ribes lacustre*		450	fac+
Valley pine	*Pinus ponderosa*		50	facu -
Black cottonwood	*Populus tricocarpa*		450	fac
Total		0	9,000	

FIGURE 3

Riparian Planting (33.85 acres)

Species			
Common Name	**Latin Name**	**Total Amount**	**Status**
Oregon ash	*Fraxinus latifolia*	2000	FACW
Red osier dogwood	*Cornus sericea*	450	FACW
White alder	*Alnus rhombifolia*	1500	FACW
Pacific crabapple	*Malus (pyrus) fusca*	450	FAC+
Indian plum	*Oemleria cerasiformis*	450	FACU
Snow berry	*Symphoricarpos albus*	450	FACU
Sitka willow	*Salix sitchensis*	450	FACW
Spirea	*Spiraea douglasii*	500	FACW
Nooka rose	*Rosa nutkana*	450	FAC
Clustered rose	*Rosa pisocarpa*	450	FAC
Pacific nine bark	*Physocarpus capitatus*	450	FACW-
Red flowering currant	*Ribes sanguineum*	450	NL
Gooseberry	*Ribes lacustre*	450	FAC+
Valley pine	*Pinus ponderosa*	50	FACU-
Black cottonwood	*Populus tricocarpa*	450	FAC
Total		9000	

Figure 3

TNC 1851 Historic Veg Map

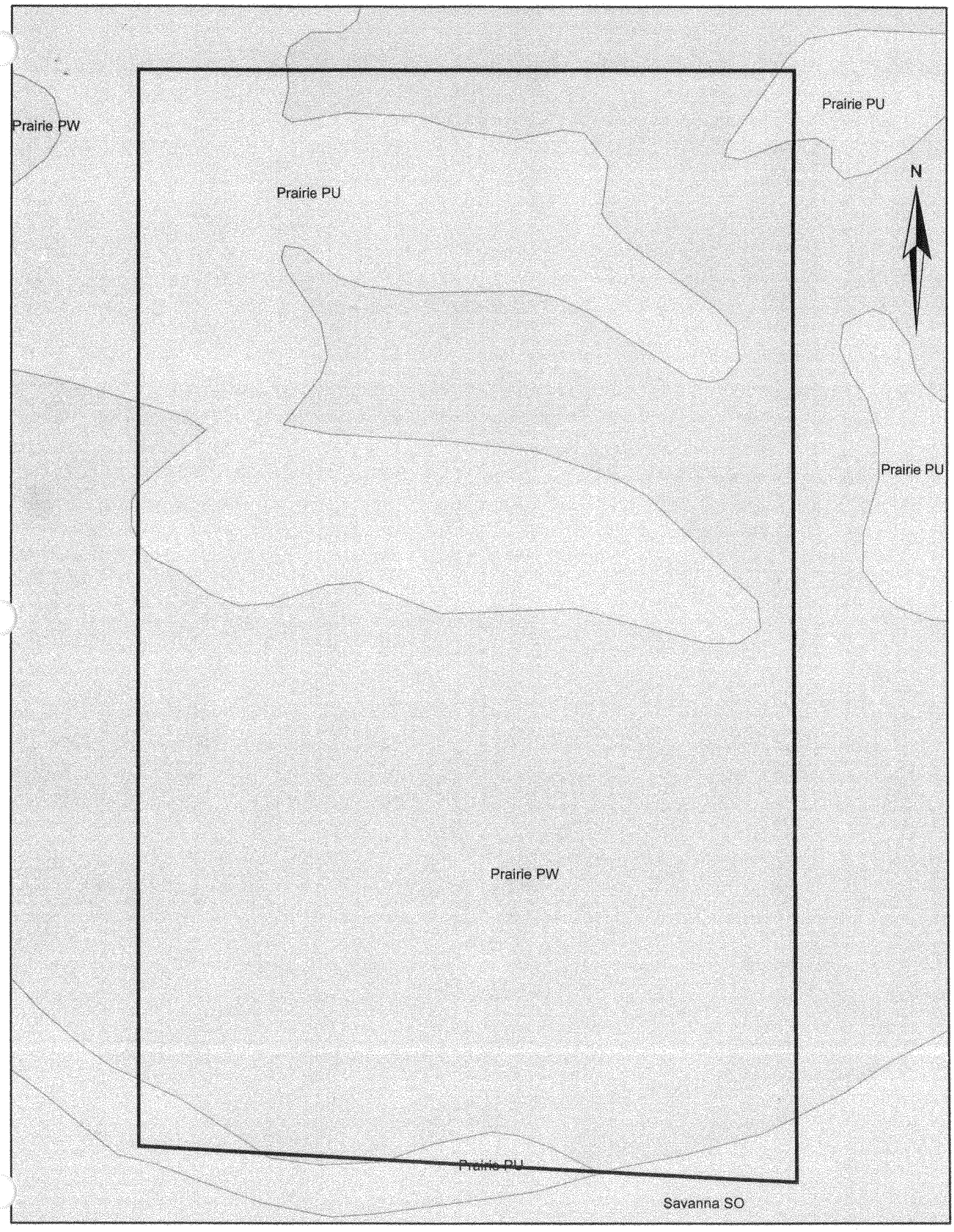


Figure 4

1936 Aerial Photograph

Figure 5

ATTACHMENT 1

BENTON COUNTY, OREGON 2005-394833
DE-WD
Cnt=1 Stn=8 COUNTER1 10/31/2005 03:10:29 PM
$10.00 $11.00 $10.00 $15.00 $46.00

00098811200503948330020022

I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

James V. Morales - County Clerk

200502572 Ticor Title

TICOR TITLE™

After Recording Return To:
Marvin Gilmour
6001 Gilmour Ln
Albany OR 97321

Send Tax Statements To:
Marvin Gilmour
6001 Gilmour Ln
Albany OR 97321

Title Order No. 200502572
Escrow No. 200502572
Tax Account No. 12S-05W-19-00700 A#166409

WARRANTY DEED

(ORS 93.850)

Robert G. Lindsay and Kari A. Lindsay, as tenants by the entirety, Grantor, conveys and warrants to **Marvin Gilmour, an estate in fee simple, Grantee,** the following described real property free of encumbrances except as specifically set forth herein:

See Exhibit 'A' attached hereto and by reference made a part hereof.

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.

The true consideration for this conveyance is $471,204.00.

Dated this 27 day of October, 05'.

Robert G. Lindsay

Kari A. Lindsay

State of OR, County of Benton)ss.

This instrument was acknowledged before me on OCT 27 2005
by Robert G. Lindsay and Kari A. Lindsay.

Notary Public

My commission expires: JUL 05 2007

OFFICIAL SEAL

ATTACHMENT I

After recording return to:
A & D Sullivan Enterprises, Inc
PO Box 2690
Albany, OR 97321

Until a change is requested all tax statements shall be sent to the following address:
A & D Sullivan Enterprises, Inc
PO Box 2690
Albany, OR 97321

File No.: 7091-735774 (SCC)
Date: January 04, 2006

THIS SPACE RESERVED FOR RECORDER'S USE

BENTON COUNTY, OREGON 2006-398101
DE-WD
Cnt=1 Stn=6 COUNTER1 01/06/2006 11:09:37 AM
$15.00 $11.00 $10.00 $15.00 $51.00

I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

James V. Morales - County Clerk

Return to First American Title

STATUTORY WARRANTY DEED

Marvin Gilmour, an estate in fee simple, Grantor, conveys and warrants to **A & D Sullivan Enterprises, Inc**, Grantee, AN UNDIVIDED 40% INTEREST, the following described real property free of liens and encumbrances, except as specifically set forth herein:

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

This property is free from liens and encumbrances, EXCEPT:

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). 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 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

The true consideration for this conveyance is **$200,000.00 PAID BY AN ACCOMMODATOR PURSUANT TO AN IRC 1031 EXCHANGE.** (Here comply with requirements of ORS 93.030)

ATTACHMENT

TICOR TITLE™

Buyer
Settlement Statement

Folder Number: 2005025?2

Settlement Date: 10/31/05 Fin

Name and Address of Buyer(s): Marvin Gilmour
6001 Gilmour Ln
Albany, OR 97321

Name, Address of Seller(s): Robert G. Lindsay
31061 Green Valley Rd
Shedd, OR 97377

Kari A. Lindsay
95 Hobbs Street
Lebanon, OR 97355

Property Location(s): 12S-05W-19-00700
Benton County, OR

Settlement Agent: Ticor Title
456 SW Monroe Ave, Ste 108
Corvallis, OR 97339
Contact: Joyce J. Muller at (541)757-0071

Description	(POC)	Buyer Debit	Buyer Credit
Contract Sales Price		471,204.00	
Earnest Money Deposit			5,000.(
Cash Balance			467,345.3
PRORATION(S)/OFFSET(S)			
County Tax Proration		679.31	
10/31/05 to 07/01/06 (243 days) @ 2.795534/day			
TITLE CHARGES			
Basic Escrow Rate		416.00	
to Ticor Title			
Title Insurance			
(includes: Title Examination, Document Preparation)			
GOVERNMENT RECORDING AND TRANSFER CHARGES			
Recording Fee			
Deed		46.00	
Due From Buyer		472,345.31	
Total Paid By/For Buyer			472,345.3

Due From Buyer	472,345.31
Total Paid By/For Buyer	472,345.31
	0.00

Attachment 1

Sale Agreement # 11409

FINAL AGENCY ACKNOWLEDGMENT

Both Buyer and Seller acknowledge having received the Oregon Real Estate Agency Disclosure Pamphlet, and hereby acknowledge and consent to the following agency relationships in this transaction:

(1) LANNY ZOELLER (Name of Selling Licensee) of TOWN & COUNTRY REALTY (Name of Real Estate Firm) is the agent of (check one): ☐ The Buyer exclusively. ☐ The Seller exclusively ("Seller Agency"). ☒ Both the Buyer and the Seller ("Disclosed Limited Agency").

(2) LANNY ZOELLER (Name of Listing Licensee) of TOWN & COUNTRY REALTY (Name of Real Estate Firm) is agent of (check one): ☐ The Seller exclusively. ☒ Both the Buyer and the Seller ("Disclosed Limited Agency").

(3) If both parties are each represented by one or more Licensees in the same Real Estate Firm, and the Licensees are supervised by the same principal broker in that Real Estate Firm, Buyer and Seller acknowledge that said principal broker shall become the disclosed limited agent for both Buyer and Seller as more fully explained in the Disclosed Limited Agency Agreements that have been reviewed and signed by Buyer, Seller and Licensee(s). Buyer shall sign this acknowledgment at the time of signing this Agreement before submission to Seller. Seller shall sign this acknowledgement at the time this Agreement is first submitted to Seller, even if this Agreement will be rejected or a counter offer will be made. Seller's signature to this Final Agency Acknowledgement shall not constitute acceptance of the Agreement or any terms therein.

Buyer _____ Print MARVIN GILMOUR Date 10/17/05 ←
Buyer _____ Print _____ Date _____ ←
Seller _____ Print ROBERT G. LINDSAY Date _____ ←
Seller _____ Print KARI A. LINDSAY Date _____ ←

FARMS, RANCHES, ACREAGE, FOREST AND NATURAL RESOURCE PROPERTIES REAL ESTATE SALE AGREEMENT

This Agreement is intended to be a legal and binding contract.
If it is not understood, seek competent legal advice before signing.

1. DEFINITIONS: All references in this Agreement to "Licensee" and "Firm" shall refer to Seller's and Buyer's real estate agents licensed In the State of Oregon and the respective real estate companies with which they are affiliated. The Licensee(s) and Firm(s) identified in the Final Agency Acknowledgment Section above are not parties to this Agreement, except as may be applicable in Sections 41, 42, 43, 47, and 50, below. Unless otherwise provided herein: (1) Time calculated in days after the date Seller and Buyer have signed this Agreement shall start on the first full business day after the date that the last party has signed accepting this Agreement, including counteroffer(s), if applicable; (2) written notices required or permitted under this Agreement to be delivered to Seller or Buyer may be delivered to their respective Licensee with the same effect as if delivered to that Seller or Buyer.

2. PRICE/PROPERTY DESCRIPTION: Buyer (print name(s)) MARVIN GILMOUR offers to purchase from Seller (print name(s)) ROBERT G. LINDSAY KARI A. LINDSAY, the following described real property, consisting of 174.52 acres, more or less (hereinafter "the Property") situated in the State of Oregon, County of BENTON, and commonly known as (insert street address, city, zip code, tax identification number, and/or lot-block description, etc.) T12-R5W-SEC.19-TL# 00700; SER#155409 CORVALLIS or 97333. (Seller and Buyer agree that if it is not provided herein, a complete legal description as provided by the title insurance company in accordance with Section 4, below, shall, where necessary, be used for purposes of legal identification and conveyance of title).

for the purchase price (in U.S. currency) of ..... A $ 471,204.00
on the following terms: Earnest money herein receipted for ..... B $ 5,000.00
on _____ as additional earnest money, the sum of ..... C $ _____
at or before closing, the balance of down payment ..... D $ _____
at closing and upon delivery of ☒ DEED ☐ CONTRACT the sum of (Lines B,C,D and E should equal Line A) .... E $ 466,204.00
Payable as follows: (Describe details of any loan(s) to be obtained) CASH AT CLOSING. For additional details, see Addendum _____

3. BUYER REPRESENTATIONS/LOAN CONTINGENCY: As of the date of signing the Agreement, Buyer has sufficient funds available to close this transaction in accordance with the terms proposed herein, and is not relying on any contingent source of funds (e.g. from loans, gifts, sale or closing of property, 401 K disbursements, etc.), unless otherwise disclosed in this Agreement.

IF BUYER IS TO OBTAIN A NEW LOAN OR ASSUME AN EXISTING ONE, THIS TRANSACTION IS SUBJECT TO BUYER AND PROPERTY QUALIFYING FOR THE LOAN (S) AND THE LENDER'S APPRAISAL BEING NOT LESS THAN THE PURCHASE PRICE. Buyer agrees to make written loan application(s) for all loans, new and/or assumed, necessary to fulfill the obligation of this transaction, not later than _____ business days (five [5] if not filled in) after the date Seller and Buyer have signed this Agreement, complete necessary papers, and exert best efforts, including timely payment of all application, appraisal and processing fees, in order to procure the loan. Buyer authorizes lender to provided non-confidential information to Listing and Selling Licensees regarding status of the loan. If the existing loan(s) is/are to be assumed, this transaction is subject to Buyer's review and approval of the terms and conditions of such existing loan(s). Seller shall promptly provide Buyer with copies of the underlying loan documents to be assumed. Buyer's failure to notify Seller of Buyer's dissatisfaction with any loan(s) to be assumed within _____ business days (five [5] if not filled in) from the date of Seller's delivery of documents to Buyer or Selling licensee, if any, shall constitute approval of all underlying loans to be assumed. If property is located in a designated flood zone, Buyer acknowledges that flood insurance may be required as a condition of the new loan. Buyer is encouraged to promptly verify the availability and cost of property/casualty insurance that will be secured for the Property.

4. TITLE INSURANCE: Unless otherwise provided herein, this transaction is subject to Buyer's review and approval of a preliminary title report and the recorded covenants, conditions and restrictions ("the report and CC&Rs") showing the condition of title to the Property. **(If not fully**

Buyer Initials MA 10/17/05 Date
Seller Initials / Date

ATTACHMENT 2

Pollution and Erosion Control Plan

Preventing, Controlling, and Reporting Leaks and Spills of Chemicals and Other Petroleum Products

(1) The operator will maintain equipment used for transportation, on-site storage, or application of chemicals in a leak proof condition. If there is evidence of chemical leakage, the operator will suspend the further use of such equipment until the deficiency has been corrected.

(2) Operators will take adequate measures to prevent leaks or spills of other petroleum products, such as fuel, motor oil, and hydraulic fluid, from entering wetlands or waters of the state.

(3) Operators will implement immediate and appropriate action to stop and contain leaks or spills of chemicals and other petroleum products. An oil spill responses kit will be on the site and ready for deployment.

(4) Staging, mixing, and transfer for chemicals and other petroleum products shall only be in locations where spillage of chemicals or other petroleum products will not enter the waters of the state and are located 150 feet away from a stream unless a variance has been approved.

(5) The operator shall immediately report to the appropriate state regulatory agency (Department of Sate Lands, Oregon Department of Forestry, Oregon Department of Agriculture) any chemical spills and other petroleum product spills resulting from the operation that enter, or may enter, the waters of the state. Such notification will not exempt the operator from any requirements of other local, state, and federal agencies to report chemical or other petroleum product spills.

(6) The Oregon Emergency Resource Center 1-800-452-0311 will be notified within 2 hours if more than 40 gallons of chemical or other petroleum products is spilled.

Erosion Control.

Operators will select equipment routes to limit the alteration of natural slopes and drainage patterns to that which will safely accommodate the anticipated use of the equipment and will also protect waters of the state.

The map shows the approximate route (temporary disturbance) of the equipment trail. The equipment operator will avoid wetlands and pick a path to the restoration site that will have the least impact to standing trees. The project impacts are minor and the addition of a plan diagrams, cross section or geomorphologic features is not commensurate with the scale of the project.

(1) Operators will use variable grades and alignments to avoid less suitable terrain so that the route minimizes the disturbance to protected resources, avoids steep sidehill areas, wet areas and potentially unstable areas.

(2) Operators will design routes no wider than necessary to accommodate the anticipated use and retain standing trees whenever possible.

(3) Operators will stabilize routes as needed to prevent fill failure and subsequent damage to waters of the state using water bars or brush wattles (Figure 1.) where needed and will be spaced at the following intervals.

Slope	Normal	Erodible (sand or ash)
5-15%	300'	150'
15-35%	200'	100'
35-50%	100'	50'
over 50%	50'	25'

(4) Drainage of the water will be directed to vegetated areas or mulched areas to contain any sediment.

(5) Onsite plant material that was moved during the project will be used to prevent sediment transport to wetlands or streams. Disturbed soils will be seeded or mulched and the material will be distributed so native vegetation can be established.

(6) When constructing stream crossings, operators shall minimize disturbance to banks, existing channels, and riparian management areas.

(7) Operators shall leave or re-establish areas of vegetation between roads and waters of the state to protect water quality. The preferred method will be the use fascines or live stake planting in the equipment trail and covering the exposed soils with mulch or vegetation. Figure 1

(8) Operators shall remove temporary stream crossing structures promptly after use, and shall construct effective sediment barriers at approaches to channels.

ATTACHMENT 3

Evergreen Wetland Mitigation Bank

January 2006

ATTACHMENT 4

RESPONSE TO COMMENTS RECEIVED DURING
PUBLIC NOTICE PERIOD

RE: EVERGREEN WETLAND MITIGATION BANK PROSPECTUS APPLICATION #APP0035590 AND 200500701

To Whom It May Concern,

This letter is in response to public notice comments regarding the above-mentioned wetland mitigation bank proposal. The applicants would first like to address the purpose and need for the mitigation bank.

Project Purpose:

- The purpose is to provide wetland mitigation for the Cities of Albany, Corvallis and the surrounding area outlined in the service area for the Bank.

Project Need:

- The Corvallis area is preparing to expand the Corvallis Airport. This could involve considerable wetland impact and this bank will have the ability to provide the needed credits for those impacts.
- The Corvallis Industrial Park is in the process of working on an economic analysis of future construction costs associated with developing the industrial park. This area totals approximately 704 acres of which approximately 560 acres appear to contain wetlands according the Local Wetland Inventory.
- Onsite mitigation at the airport or industrial park is limited by concerns of the FAA for developing wildlife attractant (wetland) within close proximity to the flight path.
- The Cities of Corvallis, Albany, Philomath and Millersburg are rapidly expanding residential growth within their respective Urban Growth Boundaries (UGB). There are extensive wetland impacts that could be associated with this residential development.
- At the present time there are no wetland mitigation banks with credits available for sale within these areas.
- If no wetland mitigation mechanism is in place for these projected impacts expansion of the UGB might become necessary in order to satisfy the growth needs for these communities, which could encroach on additional farm lands adjacent to these UGB areas.

As a direct result of these needs, the sponsors of the Evergreen Wetland Mitigation Bank purchased the Evergreen property to develop a mitigation bank to help address them. Ms. Hull had the following concerns our comments to those concerns follow each concern.

1. **Increase in cougar population**
   Apparently a cougar was sighted recently in the area. However, cougar have a range of 40 to 75 miles that they travel. It is unlikely that creating wetlands will attract a cougar population to this area. The presence of the bank will have no impact on the Dept. of Agriculture and ODFW ability to address cougar removal from the area if needed.

2. **West Nile Virus**
   As we all know, in the past few years the West Nile Virus has become a concern for some folks, with a few documented cases in Oregon. As a result there is quite a bit of information regarding how to avoid the virus at the following website.
   http://www.oregon.gov/DHS/ph/acd/diseases/wnile/wnile.shtml

   In addition, there is no scientific evidence that naturally functioning wetlands increase the potential for West Nile virus infection.

3. **Increase in insects and personal health**
It is very unlikely that creation of a wetland mitigation bank will cause an increase in insects within this area. This bank will attract many species of birds which will feed on insects within the bank and immediate area. The bank will also create habitat for amphibians which will also help to keep the insect population down. Additionally, Ms. Hull has fairly recently created a wetland pond on her property just west of the bank boundary and didn't seem concerned at that time. We understand by her letter that Ms. Hull is taking immunosuppressant agents per her doctor's letter dated 1/10/06. This bank will not create late season ponded water and will dry similar to existing conditions by late summer making it unlikely to see significant changes in insect population densities.

4. **Flooding and erosion issues/loss of agricultural land base**
During the Mitigation Banking Review Team (MBRT) process and in drafting the MOA and Final Instrument for the bank we will have to prove to the regulatory agencies (Department of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps) that we will not create a flooding issue with the design of our bank. We have been meeting with some of our neighbors on this subject and so far they are satisfied that our bank and its design will not cause them a problem. However, we will be continuing this discussion as we develop the bank. The bank sponsors are willing to work with neighbors to consider contouring the bank site to increase drainage of surrounding agricultural lands into the bank wetlands thus improving drainage and flood water conveyance from adjacent lands. The neighbors will also get another opportunity to provide comments during the Removal/fill permitting process for the bank.

The Evergreen bank site is not class 1 farm soils. The agriculture opportunities on this site are pretty much limited to annual rye grass due to wetness. As stated in the need for the bank, this bank will provide credits for projects within the local UGB and as such could eliminate further encroachment into additional farm land if these municipal areas found it necessary to expand their UGB.

5. **Flooding could compromise Philomath sewage lagoons**
The bank will not compromise the sewage lagoons by increased flooding or any other means. The bank will function to hold floodwaters on the bank site, but will not stop or impede floodwater coming onto the site. In addition, the bank will help the existing local flooding problems the lagoons have exacerbated. We have done or best to design the bank to help alleviate the flooding by capturing and temporarily storing floodwater thereby controlling some of the downstream flooding. With such a relatively small site we are limited in what we can do to help but we will not increase the problem.

6. **Bank sponsors may default on maintenance after credits are sold out**
The MOA and Final Instrument for this bank will require a long term maintenance agreement for the bank site. This particular bank will be establishing an endowment that will provide funding for this long term maintenance. The bank will also be placed in a permanent conservation easement.

7. **Floodplain development permit required**
The bank sponsors have applied for a development in the floodplain permit.

8. **Access/Approach permit required**
An access/Approach permit has been obtained by the bank sponsors.

9. Rare plant survey

A rare plant survey is being conducted prior to construction of the bank.

11. Opportunity for propagation of rare plant species

Once the bank is constructed and planted the bank sponsors will look plan to look into the possibility of obtaining additional credit for propagation of endangered plant species especially those that will further attract other endangered species such as the Fenders Blue Butterfly.

ATTACHMENT 5

COMMUNITY DEVELOPMENT DEPARTMENT
360 SW Avery Avenue
Corvallis, OR 97333-1139
(541) 766-6819
FAX (541) 766-6891

File No. LU-06-007

NOTICE OF STAFF DECISION

NATURE OF APPLICATION:	**Land Development Activities in the Floodplain** consisting of soil surface re-contouring for diversion of surface water run-off and planting of native vegetation to enhance wetland mitigation bank project.
APPLICABLE CRITERIA:	Benton County Code (BCC) Sections 83.005, 83.010, 83.110, and 83.405.
PROPERTY LOCATION:	The subject property is located south of the City of Philomath, on the west side of the intersection of 53rd Street and Bellfountain Road. (T12S R5W Section 19, Tax Lot 700)
PROPERTY OWNERS:	**Marvin Gilmour** **A & D Sullivan Enterprises, Inc.**
ZONE DESIGNATION:	Exclusive Farm Use (EFU)
COMP. PLAN DESIGNATION:	Agriculture
CAC PLANNING AREA:	Mid Benton
STAFF CONTACT:	Toby A. Lewis

DECISION

Based on Benton County's review of the application and comments received from the Benton County Public Works Department (attached), completion of the project proposed by the applicant will not cause a significant negative effect on surrounding properties due to a change in the flow of floodwaters and will not increase flood elevations significantly in the immediate vicinity of the subject property. The above-referenced application is granted **approval**, subject to the conditions of approval listed below. All development on the property must be consistent with approved plans and physical development of the property is not authorized except as specified to satisfy conditions set forth herein:

CONDITIONS OF APPROVAL

The following conditions shall be met prior to issuance of building permits, and shall continue to be met, as applicable, throughout the duration of the approved use:

1. Physical development of the land will be limited to the specific work requirements and improvements as described in the application materials submitted for this file (LU-06-007).

2. The applicant shall seed and mulch all disturbed areas resulting from construction in accordance with the wetland mitigation bank plan submitted with the application packet.

3. Due to the size of the proposed project (approximately 174 acres), a construction site storm water permit may be required from the Oregon Department of Environmental Quality. If a permit is required, the applicant shall obtain, and demonstrate compliance with, all required permits from the Department of Environmental Quality.

PLANNING OFFICIAL: Peter Idema Date of Decision: 3-22-06

BENTON COUNTY
O·R·E·G·O·N

PUBLIC WORKS DEPARTMENT
360 SW Avery Avenue
Corvallis, OR 97333-1192

(541) 766-6821
FAX (541) 766-6891
www.co.benton.or.us/pw/index.html

March 20, 2006

MEMORANDUM

TO: Toby Lewis, Assistant Planner
Community Development Department

FROM: Laurel Byer, PE
Public Works Department

SUBJECT: Land Development Activities in the Flood Plain
Marvin Gilmore, Planning File LU-06-007

Review of this application indicates that the entire affected site is within the Floodway Fringe and the provisions of BCC 83.110 are applicable to the proposed fill activity. The applicant proposes to construct four earthen berms which will directly affect approximately 28.93 acres in Tax Lot 700, Township 12 south, Range 5 west, Section 19. The PEMC-I and PEMC–IV berm heights vary from 0 to 1 foot above original ground to attain a finish elevation of approximately 245.0 feet MSL. The PEMC-II and PEMC-III berm heights vary from 0 to 1 foot above original ground to attain a finish elevation of approximately 243.0 feet MSL. The base flood elevation at this property ranges from 245.1 to 248.0. No fill occurs in a designated floodway.

The applicant proposes to intercept direct precipitation and sheet flow runoff and impound the water to establish and maintain wetland plant species. The Department of Water Resources should be consulted for possible permitting requirements.

The width of the flood plain measures approximately 8,500 feet from the centerline of the Marys River through the applicant's parcel. Evergreen Creek is approximately 6,300 feet from the centerline of the Marys River. The proposed berm construction is adjacent to Evergreen Creek and therefore lies completely within the flood plain. The proposal is to removal fill from the flood plain to build the berms, therefore there is no net increase of fill in the floodplain. The direction of flow may be affected slightly, but it does not appear that the flood plain elevations will be affected significantly. There are no dwellings at this river section that will be affected by deflection of river flow or negligible increase in velocities.

The applicant should, as a condition of approval, seed and mulch any disturbed areas resulting from construction. These erosion control measures shall be consistent with and shall be monitored in accordance with the State approved wetland mitigation bank plan.

G:\Avery\Laurel Byer\LU06-007.doc

PUBLIC WORKS DEPARTMENT
360 SW Avery Avenue
Corvallis, OR 97333-1192

(541) 766-6821
FAX (541) 766-6891
www.co.benton.or.us/pw/index.html

March 20, 2006

MEMORANDUM

TO: Toby Lewis, Assistant Planner
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FROM: Laurel Byer, PE
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The applicant should, as a condition of approval, seed and mulch any disturbed areas resulting from construction. These erosion control measures shall be consistent with and shall be monitored in accordance with the State approved wetland mitigation bank plan.

COMMUNITY DEVELOPMENT DEPARTMENT
360 SW Avery Avenue
Corvallis, OR 97333-1192
(541) 766-6819
Fax (541) 766-6891
Inspection Line (541) 766-6898

PERMIT

PERMIT NUMBER: B0600054
Type of Permit: Other-Does Not go to C-404
Type of Building: (Y) **Residential** ( )**Commercial**
Stories: 0 **Total Sq. Ft.:** 0
1
Work Description: ROAD APPROACH **Date Finaled:**

Issued Date: 01/31/2006
Status: ISSUED
Public: N
Number Bedrooms: 0 **Housing Units:**

Owners Name: GILMOUR MARVIN
Site Address:

Mailing Address:
6001 GILMOUR LN NW
ALBANY OR 97321-9292

Home Phone: 928-2507
Alternate Phone:
Contact Name:
Contact Phone:

Prop Serial Number: 166409 **Township/Range/Section/Lot: 125190000700**

Valuation: $0.00 **Zone:** EFU **Flood Plain:** NO
Minimum Required Setbacks:
Roads: 0 **R-O-W/Front:** 0 **Side1:** 0 **Side2:** 0 **Rear:** 0 **Stream:** 0

Contractor: OWNER **Phone:**
Address: **CCB#:** OWNER
-
-, OR

Permit Fees:

Fee Description	Total Fee	Total Paid	Balance Due
Res Driveway Appr/Bldg	120.00	120.00	.00
Res Driveway Approach/PW	50.00	50.00	.00

BENTON COUNTY PUBLIC WORKS

360 SW Avery Avenue, Corvallis, OR 97333

ROAD APPROACH APPLICATION AND PERMIT

PURSUANT TO ORS CHAPTER 374

APPLICANT'S NAME Marvin Gilmour

(Installer's Name and Daytime Phone)

SITE ADDRESS Bellfountain Rd

MAILING ADDRESS 6001 NW Gilmour Ln.

CITY Albany STATE Or

DAYTIME TELEPHONE 541-928-2507 ZIP 97321

PERMIT NO. B0600054

ROAD NO. 25100

ROAD NAME BELLFOUNTAIN

MILE POST

T 12 R 5 SEC. 19

TAX LOT ~~1 2 3 4 5 6 7 8 9 10~~ 700

SIDE OF ROAD: N S E (W)

DATE WORK IS TO BEGIN August, 2006

EST. COMPLETION

Plot Plan Must Accompany Application

[redacted]

I HEREBY DECLARE THAT I HAVE LAWFUL AUTHORITY TO APPLY FOR THIS PERMIT AND WILL ABIDE BY STANDARDS AS SET FORTH HEREIN AND AS REQUIRED BY STATE LAW

APPLICANT [signature] **DATE** 1/24/06

MINIMUM STANDARDS

ALL WORK SHALL CONFORM TO THE STANDARD DRAWINGS AND SPECIFICATIONS ATTACHED AND GENERAL PROVISIONS ON THE BACK OF THIS FORM

REQUIRED TYPE OF SURFACE AC or PCC APPROACH WIDTH 32'

CULVERT LENGTH ~32' CULVERT SIZE 18" dia TYPE Concrete T & G-or ADS-Smooth Bore

OTHER 12' wide drive with 10' aprons, water shed to ditchline and not road

APPROVAL [signature] DATE 1/30/06 PERMIT VALID UNTIL 7/30/06

REQUIRED INSPECTIONS

Culvert shall be in-place, but not covered, when culvert inspection is requested.

CULVERT INSPECTION Req'd **DATE**

Approach shall be prepared for paving, but not paved, when inspection is requested.

PRE-PAVING Req'd **DATE**

Approach shall be completed before inspection is requested.

FINAL INSPECTION Req'd **DATE**

PERMIT FEE $ 170.00 pd

G:\Avery\MASTERS\PWR063.DOC
6/9/2004

WHITE: Inspector
YELLOW: Applicant

"Exhibit D"

Crediting and Debiting Procedure for the Bank

I. Impact Debit Values

The U.S. Army Corps of Engineers (Corps) and the Department of State Lands (DSL) shall determine the appropriate and specific number of mitigation credits necessary to be debited against the Evergreen Wetland Mitigation Bank (Bank) to achieve no net loss of functions and values during the permit process based upon their use of methods determined to be appropriate by said agencies, of the impact areas and the status of this Bank.

II. Mitigation Credit Creation

A. Pre- Construction

Mitigation credits shall be created by development of a wetland mitigation area with upland buffers in substantial conformance with Exhibit C and Section V.F. of the MOA. The number of credits created by this Bank shall initially be based upon the Instrument. Credits may then be adjusted by the Mitigation Bank Review Team (MBRT) based upon the results of the monitoring program described in Section V of the MOA, if and only if, as-built conditions differ substantially from those anticipated in the Instrument. Adjustments may include changes in the number of available credits or minimum credit ratios associated with use of the Bank. Each acre of land area within the property described in Exhibit C shall be designated by the Instrument as to which types of wetlands, as classified by the Cowardin classification, shall be enhanced, restored, or created by grading and/or water impoundment. The number of credits created by this plan shall be determined by community and/or cover type.

The exact number of credits created is estimated by the Instrument and will be adjusted, if necessary, based upon final as-built conditions. The total number of credits for the Evergreen Wetland Mitigation Bank is estimated to be 84.89 credits.

B. Post-Construction

The Corps and DSL, acting in consultation with the MBRT, may assess the functions and values of this ecological system if part or all of the site fails to meet the Performance measures listed in the Instrument (or when requested to do so by the Sponsors). The Corps and DSL may issue a written determination to the Sponsors that due to the demonstration of successful/unsuccessful performance, the number of credits attributable to this Bank are increased or decreased to reflect the functions and values provided.

III. Accounting Procedures

A. The Sponsors shall comply with the accounting procedures described in Section V of the MOA and the quantitative assessment of credits and debits for permitted impacts as described herein.

B. In no event shall the cumulative total area of impacts to waters of the U.S. permitted to use credits from the Bank exceed the total area of waters of the U.S. created by this Bank.

"Exhibit E"

Service Area Map and Discussion

The proposed service area for the Bank includes the portion of the 4th Field Hydrologic Unit 17090003. The service area is totally within the boundaries of the Middle Willamette Drainage Basin and will be limited to a 600 foot elevation or lower for the proposed impact site. The service area has similar soils, climate, and vegetation as well as identifiable wetland mitigation needs.

The Service Area Map (Figure 2) delineates the service area which is composed primarily of Willamette Valley agricultural lands with a mixture of medium to small cities within Linn, Benton, Lane and to some extent Polk Counties. It is intended to service the entire urban growth boundaries of Millersburg, Albany, Tangent, Philomath, Corvallis, Lebanon, Brownsville, Tangent, Junction City, Vaneta, Halsey and Eugene.

Credit Availability Summary

There are five existing wetland mitigation Banks that serve areas within at least a portion of the proposed service area for the Evergreen Bank. These include Marion, Oak Creek, Mid-Valley, Amazon Creek and Frazier Creek banks. The following sections summarize the credit status of each bank. It should be noted however, that just because a bank has the potential for a certain number of credits does not mean that is will ever realize these credits.

Marion Bank was approved in summer 2001 with a maximum of 34.48 credits to be developed. To date only 6.48 credits have been released, and according to the sponsor, there currently are no credits available for sale. The Marion Bank has a combination of forested, scrub/shrub and emergent vegetation with a HGM classification of flat and depressional.

The Oak Creek Bank, approved in Summer 1999 has a maximum of 31.8 credits to be developed. There has been a total release of 15.6 credits, all of which according to the sponsor are sold. There are several HGM classes represented including riverine, depressional and slope with emergent and scrub/shrub vegetation

The Frazier Creek Bank was approved in the Spring of 2003 with a maximum of 12.88 credits in the first phase of which 5.88 credits have been released. According to the sponsor, all credits are sold. The Frazier Creek Bank has a combination of emergent vegetation, scrub/shrub and forested vegetation with a HGM classification of riverine flow-through, flat and slope.

The Mid-Valley Bank approved in the Fall of 2005 has a maximum of 16.8 credits of which 5.04 have been released and sold. The Mid-Valley Bank has a combination of emergent, scrub/shrub and forested vegetation with a HGM classification of riverine flow-through and slope/flat.

The Amazon Creek Wetland Mitigation Bank was approved in Spring 2002 with a maximum of 39.78 credits of which 39.78 credits have been released. According to the Bank sponsor Amazon Creek only has 5.5 credits that are not sold or currently reserved. The northern part of the Amazon Creek Bank's service area overlaps with the southern part of the Evergreen Bank's proposed service area. Amazon Creek has a combination of emergent, forested, scrub-shrub vegetation with a HGM classification of slope/flat.

Need According to Population and Permit Studies

The sponsors have contacted Bill Ryan with the Oregon Department of Transportation's (ODOT) Bridge Program, regarding ODOT's projected wetland mitigation needs. Mr. Ryan estimated that ODOT would have an on-going average of three acres per year of wetland impact within the Evergreen Mitigation Bank's service area. In addition to the three acres a year of impact, there would also be minor impacts associated with ODOT's bridge replacement program. Ken Franklin, Aquatic Resource Unit Manager for ODOT's Environmental Services said that it is ODOT's priority to use existing wetland mitigation banks when an ODOT project lies within an existing mitigation bank's service area, over conducting their own mitigation, as long as approved by the regulatory agencies.

The sponsors have also contacted Chris Bayham, Environmental Coordinator with the Association of Oregon Counties. He indicated that the counties within the Bank's service area would need to purchase credits for county public works projects for many years to come.

All of the counties in the Bank's proposed service area have grown significantly in the last ten years. Population projections from Portland State University for the next ten years are similar. According to the Willamette River Basin Planning Atlas, over the next 50 years the number of people living in the Willamette River Basin is expected to nearly double.

Local Wetland Inventory (LWI) Summaries

The three largest cities in the service area Eugene, Albany and Corvallis and one of the smaller ones, Philomath, all have approved Local Wetland Inventories. Albany's Local Wetland Inventory covered a total of 7,127 acres, of which 1,695 acres were found to be wetlands. Of the 1695 acres, 635 acres were found to be locally significant wetlands leaving 1,060 acres considered locally insignificant). This accounts for 14.9 percent of the total urban growth boundary which has been determined through local landuse planning to be locally insignificant wetlands and as such is at greatest risk for development. All wetlands however, whether determined to be significant or insignificant are regulated by DSL.

The City of Corvallis has published in Draft form the City of Corvallis Natural Features Inventory - Local Wetlands Inventory. The Local Wetland Inventory (LWI) found 2,534 acres of wetland in the 17,963 acre Corvallis urban growth boundary, which is 14 percent of the total land base. Wetlands had to be at least 0.5 acres or larger to be included, thus even more wetlands exist that could be impacted by development. Of the 2,534 acres

identified only 836 acres were found to be locally significant. The remaining 1698 acres of identified wetlands could be potentially at significant risk for future development.

The Philomath Local Wetland Inventory included 449 acres of wetland within the 2,680 study area, which is 16.8 percent of the total study area, most of which are within undeveloped portions of the city limits. Wetlands have been a limiting factor for commercial and industrial development in the past, and will continue to be, due to the ratio of wetland to non-wetland within the city limits. Thus, if Philomath continues to grow at its pace of the last ten years, 28.7%, wetlands could be affected, and subsequently require mitigation. The Philomath LWI did not list which wetlands would be considered significant, only summarized each of the wetlands functions, thus, no acreage for significant versus insignificant wetlands are available.

Looking at a combination of the cities= growth rates, the number of acres of wetland within the urban growth boundaries and the percentage of land able to be developed occupied by wetlands, it is easy to conclude that in the future, if development continues, wetlands could continue to be filled creating a need for additional mitigation banks in this service area.

Patrick S. Thompson Consulting Needs

Patrick S. Thompson Consulting (PSTC) has recently delineated, will be delineating, and will be providing mitigation plans for several large development projects within the Evergreen Wetland Mitigation Bank=s proposed service area. Despite minimizing and avoiding wetland impacts where practical, it is anticipated that these projects will have considerable wetland impacts requiring mitigation. Every effort will be explored for on site mitigation opportunities; however, it is very likely some of these impacts will be mitigated off site within the Bank=s service area. These projects are as follows:

Project	Location	Wetlands Present	Anticipated Credits Needed
Somerset Heights	Albany	10.55 acres	5
Sweetwater Subdivision	Albany	16.62 acres	5
Martin Trail System	Corvallis/Philomath	120 acres	10
Conser Homes	Albany	1.0 acre	1
Cordell Post Property	Albany	30 acres	6
Henshaw Property	Albany	30 acres	5

An extremely large need located within the proposed service area, is for the City of Corvallis Industrial Park area. PSTC has done an initial review of a 760 acre industrial zoned area for the City of Corvallis. Initial estimates are that approximately 560 acres of the 706 acres are jurisdictional wetlands. If only 10% of potentially wet, industrial land is developed, that would require in excess of 50 wetland mitigation credits.

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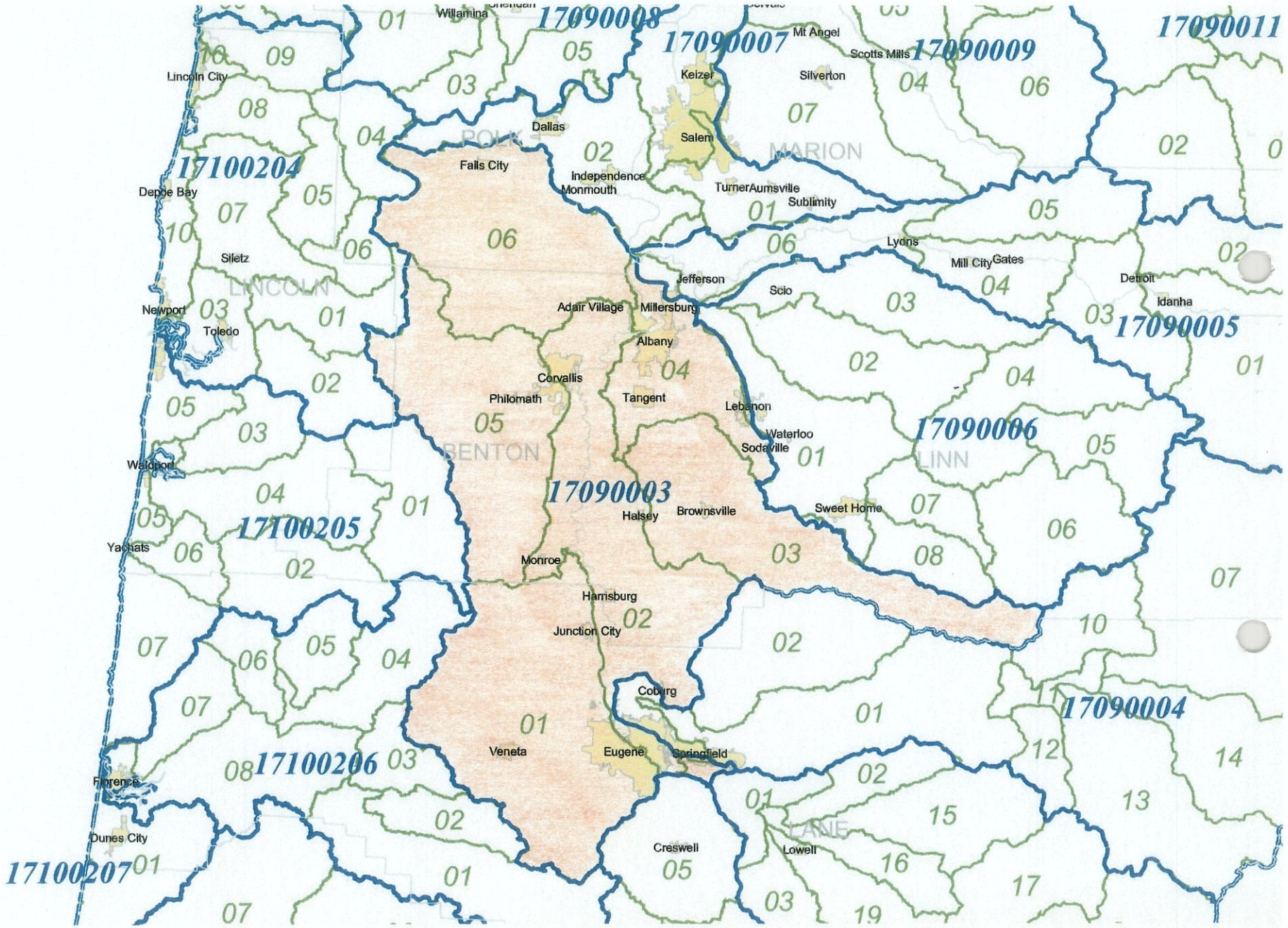


Evergreen Mitigation Bank - Service Area Map **Figure 2**

"Exhibit F"

RESTRICTIVE COVENANT

BENTON COUNTY, OREGON **2006-411511**
DE-COV
Cnt=1 Stn=8 COUNTER1 **10/10/2006 10:37:50 AM**
$20.00 $11.00 **$31.00**

00122396200604115110040048

I, James V. Morales, County Clerk for Benton County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

James V. Morales - County Clerk

After Recording Return To:
Marvin Gilmour
6001 NW Gilmour Lane
Albany, Oregon 97321

RESTRICTIVE COVENANT

Marvin Gilmour and Al Sullivan are owners of the 174.52 acres located in Benton County, Oregon, of restored and enhanced wetlands located at Lot1, Lot 2, Lot 3 and Lot 10 in Sec. 19, T12S, R5W, Tax Lot 700, as defined by professional land survey conducted and labeled "Exhibit A" hereto, makes the following declarations as to limitations, restrictions and uses to which the property described herein is now subject and specifies that such declarations shall constitute covenants to run with the land as provided by law and shall be binding on all parties and all persons claiming under them this declaration of restriction being designed for the purpose of keeping and maintaining portions of the real property described herein in their created wetlands state. The property subject to this Restrictive Covenant has been offered to the U.S. Army Corps of Engineers (ACOE) and Oregon Department of State Lands (DSL) to offset wetland loss or degradation at other locations, in Linn, Benton, Lane, and Polk Counties. This arrangement is defined in a Memorandum of Agreement and Wetland Mitigation Banking Instrument dated October, 2006, allowing the Evergreen Wetland Mitigation Bank to restore wetlands on this property and to sell credits to entities holding specific permits issued by the ACOE and DSL. This Covenant is executed to assure that the Protected Property will continue to fulfill that purpose and that it will be allowed to exist as wetland in perpetuity.

The property described herein, which is the creation of new wetlands shall, except as provided in "Reserved Rights" below be subject to the following:

1. There shall be no, destruction, cutting, trimming, mowing, alteration or spraying with biocides of any vegetation in the Protected Property, nor any disturbance or change in the natural habitat of the Protected Property in any manner, except to eliminate non-native invasive species from the site, or conduct other required maintenance.

2. There shall be no agricultural, commercial or industrial activity undertaken or allowed in the Protected Property except for limited wetland plant seed harvesting; nor shall any right of passage across or upon the Protected Property be allowed or granted if that right of passage is used in conjunction with agricultural, commercial or industrial activity.

3. No domestic animals shall be allowed to graze or dwell on the Protected Property.

3. No livestock 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 or others materials, nor any dumping of ashes, trash, garbage, or of any other material, and no changing of the topography of the land of the Protected Property, once the wetlands is constructed, unless specified in the contingency plan.

5. There shall be no building of new roads or any other rights of way nor widening of existing roads on the Protected Property.

6. There shall be no damming, dredging nor any activities or uses of the Protected Property detrimental to water quality.

7. There shall be no operation of dune buggies, motorcycles, all terrain vehicles, or any other types of motorized vehicles on the Protected Property, except for monitoring, maintenance, and oversight purposes by the owner or his designee.

NEVERTHELESS, and notwithstanding any of the foregoing provisions to the contrary, the owners of the property reserves for themselves, their heirs, successors and assigns the following Reserved Rights; PROVIDED, however, that the exercise of such rights is not inconsistent with the conservation interests associated with the Protected Property.

RESERVED RIGHTS

1) Any activities related to the initial or corrective measures or for long term maintenance of the wetlands relating to construction, wildlife enhancement, planting, replanting, maintenance, trash removal, invasive weed or dominant species control may be conducted to insure compliance with the mitigation plan, based upon Oregon's Removal-Fill Law and the requirements of the Division of State Lands.

2) The Protected Property may be used for educational purposes. Activities may include soil or plant sampling, wildlife monitoring or other "outdoor classroom" activities, to the extent that this use does not unduly alter the health of the protected area. The Protected Property may also be used for limited native seed harvesting.

3) Trails may be made through the upland habitat portions of the 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) Emergency crossing of the protected property by farm equipment or other large equipment is allowed. Restoration of the site will be conducted for any damages that are incurred to the protected property.

5) The right to undeveloped recreational uses including limited hunting, fishing, and hiking for fee or gratis.

6) The right to prevent trespass and control access by the general public.

7) The right to install wildlife blinds for viewing and hunting.

8) The right to cut firewood for the owners own use in the wooded buffer area.

BURDENS

Expenses relating to preservation of the Protected Property subject to the Covenant shall be allocated to and paid by the Owners of the Protected Property. These Burdens may be transferred to another entity by granting a Conservation Easement to allow that entity access to the 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. To be effective, such approval must be witnessed, authenticated, and recorded pursuant to the law of the State of Oregon.

By: _____
Marvin Gilmour

_____
Al Sullivan
Dated this 25 day of Sept., 2006
State of Oregon
County of Benton

Personally appeared the above-named Marvin and Cindy Gilmour and acknowledged the foregoing instrument to his voluntary act and deed. Before me this 25 day of Sept. 2006.

by TOM ZERKEL.

_____ Notary Public for Oregon
My Commission expires:

OFFICIAL SEAL
THOMAS P ZERKEL
NOTARY PUBLIC-OREGON
COMMISSION NO. A378178
MY COMMISSION EXPIRES MARCH 7, 2008

EXHIBIT A

LEGAL DESCRIPTION:

Lot 1, Lot 2, Lot 3 and Lot 10, in Section 19, Township 12 South, Range 5 West of the Willamette Meridian, Benton County, Oregon.

Also: Beginning at a stone at the Southeast corner of the Alexander Liggett Donation Land Claim No. 63, in Township 12 South, Range 5 West of the Willamette Meridian, Benton County, Oregon; and running thence South 87° 08' East 33.26 chains to an iron pin in the County road and on the West line of the Nicholas Ownby Donation Land Claim no. 62 at a point 10.812 chains North 0° 00 1/2' East of the most Northerly Northeast corner of the B. W., Wilson Donation land Claim No. 64, which pin is 30 feet South 87° 08' East of a 3/4 inch bolt; thence North 0° 00 1/2' East along the Claim line 14.418 chains to an iron pin on the line between Sections 19 and 30, 20.545 chains South 89° 27 1/2' West of the Northeast corner of Section 30, said Township and Range and which pin is 30 feet North 89° 25 1/2' East of a 1/2 inch iron rod; thence South 89° 27 1/2' West along the section line 33.254 chains to the East line of said Liggett Claim; thence South 0° 09' East 12.44 chains to the place of beginning.

"Exhibit G"
Performance Bond
To be provided prior to any credit sales in the Bank

"Exhibit H"
Proposed Long Term Endowment

"Exhibit H"
Proposed Long Term Management Plan

Introduction

The overall goal of the Evergreen Wetland Mitigation bank is to provide a sizable, contiguous tract of high quality native Willamette Valley wetland habitat which supports a diversity of flora and fauna in perpetuity. One of the most important aspects in reaching this goal is aggressive management (site prep) the first several years of establishment to prevent problem species from getting a foot hold. The bank sponsors through consultation with MBRT and adhering to strict performance measures set forth in the final instrument and MOA will have the site in premiere condition prior to moving into the long term maintenance aspects of the site. This will make the long term maintenance a much less labor intensive task, focusing on prevention and suppression of invasive species, while introducing various means of disturbance and utilizing adaptive management to maintain the sites diversity. Long term maintenance activities will be funded through an endowment fund set up prior to release of the last 10% of credits, utilizing the annual interest accrued. Long term protection will be through the existing restrictive covenant, or DSL and the Corps will allow the restrictive covenant to be replaced by a conservation easement or similar legal property protection instrument when the project is handed off to the long term steward to be chosen later.

Objectives

Since the site will contain three distinctive wetland habitat types, each one will have a little different management prescription based on the potential problems in each area and the most desirable state. The greatest threat to the emergent marsh habitat will be establishment of invasive weed species and encroachment of undesirable tree species. The best way to prevent these conditions is through field patrols during the middle of the growing season and again prior to potential seed set of undesirable species. The most likely problem species to monitor for will be reed canary grass, penny royal, and growth of cottonwood, willow, and ash trees over four inches in diameter at which point they will be to large to mow. Once field patrols are completed, best management practices for particular problem species can be utilized to control the problem, funding for mowing, burning, and spot application of herbicide will all be more then adequately funded through the endowment.

The forested wetland areas will be managed to slowly progress towards later serial stages with an uneven aged stand where stem size will increase, stem density will decrease, and the herbaceous layer will change in composition based on canopy cover. The greatest threat to this habitat will be Himalayan blackberry, thistles, teasel, English hawthorn, and wild cherry. Field patrols will be the best measure to prevent potential problems with all three habitat types. Once problem areas are located, the best management practice can be utilized for the particular problem species.

The wet prairie area will be managed to provide a diversity of native grass, sedge, rush, and forbs species. A combination of mowing, burning and early detection of invasive species will likely be the best management practice to achieve this goal. The greatest threat to this habitat type after it's well established will likely be the encroachment of woody tree species without periodic disturbance by fire or mowing. Field patrols will be necessary to detect any colonization of species such as thistle, teasel, reed canary, meadow knapweed, and various non-native grass species such as velvet grass, various bent grass species, annual rye grass, and meadow foxtail.

Long Term Protection
The Evergreen Wetland Mitigation Bank (Bank) site will be protected from conflicting land uses by a deed restriction during a portion of the regulatory life of the bank, up until the deed restriction is replaced with a more legally binding and enforceable protection mechanism. At such time, but before the date that the final monitoring report is due, a package consisting of a conservation easement, an adequate endowment, and acceptance by a qualified long term steward, shall be established. The bank sponsors may choose a more secure long term protection option, such as those suggested below, with consent of the MBRT.

The MBRT desires that a third party (not landowner) easement holder would be responsible for enforcing the conditions of the conservation easement and for acting as the long term Bank steward. Another acceptable option for perpetual Bank protection, in addition to the conservation easement and endowment, could include transferring fee title ownership to an entity (such as an established land trust, conservancy, or public agency) with a wetland preservation mission and a demonstrable reputation for environmental stewardship and financial stability. The MBRT will review the proposed easement, endowment, and steward(s) for approval prior to the last 10% credit release.

Long Term Steward
A long term steward for the Bank will be selected. The purpose of the steward is to maintain the Bank, in perpetuity, guided by the goals and objectives set forth in this MOA. The steward will be chosen using at minimum, the following criteria. The steward's guiding mission will be one of conservation. They will have both the capacity and experience to carry out the long term maintenance provisions of this management plan. The steward's track record will be reputable, their financial skills proven and will have demonstrated their natural wetland management skills.

Funding
In order to fund the long term management activities for the site, the bank sponsors will set up an endowment fund prior to the release of the last 10% of credits. The initial set aside will be such that annual interest income from the fund will be sufficient to cover the annual maintenance costs. The amount of the endowment may need to change to better reflect actual management costs or the needs of the selected long term steward. Facility maintenance will be completed on a needs basis with the exception of liability insurance, CPA audit, and endowment processing which will be completed on an annual basis. Habitat management will be the most important aspect for long term maintenance of the site. Costs were broken down utilizing costs from potential contractors, the PAR analysis template, and the Mud Slough Mitigation Bank figures for references. Several items such as collecting/purchasing additional seed and re-drilling problems areas are included as contingencies and will likely never occur since the bank will be well established and these potential issues will have already been rectified by the time the bank moves into the long term management stage. Mowing, burning, and spot spraying will account for the majority of the workload with burning negating the need for mowing in designated years, and the need for spot spraying will increase following a burn cycle. Field patrol and project oversight will both be essential aspects, utilizing both a paid consultant, and a field representative from one of several reputable agricultural product supplies who provide this service free of charge. These two individuals will monitor the site for problem areas and make decisions on the means in which to address the problems. Administrative costs will include annual report compilation and office related expenses.

The sponsors are proposing to fund the endowment by placing $1,300 per credit sold into the endowment after the sale of the first ten credits. The Bank is expected to generate 84.8 credits. This will be an investment of $97,240 that will be placed in an interest bearing account, only the interest of which, will be used for the on going long term maintenance. The following table was generated to

determine the long term maintenance costs for the Bank which indicates a total average annual cost of $6464.

PAR Budget Table - Evergreen Mitigation Bank - Annual Maintenance Costs

CATEGORY	SPECIFICATION	UNITS	UNIT COUNT	UNIT COST	ON YEARS	ON COST	CATEGORY TOTAL
Facility maintenance:							**$1518**
Parking Lot	re-surface gravel	YD^3	111	10	10	111	
Barricade	Gate	Item	1	300	10	30	
Lock	Padlock	Item	1	20	3	7	
Insurance	liability fee	Acre	174	0.25	1	44	
Audit	CPA Audit	Acre	174	0.25	1	44	
Endowment	Process Endowment	Hours	3	30	1	90	
Taxes	Yearly Property Tax	Acres	174	6.28	1	1093	
MICS	Vandalism, dumping, ect	Item	1	100	1	100	
Habitat Maintenance:							**$4,146**
Project Management	Field patrol/project oversight	Hours	20	30	1	600	
Backpack Sprayer	Solo 3.5 gallon	Item	1	80	5	16	
Exotic Veg Control	Spot Spraying	Hours	170	10	1	1,700	
Herbicide	Round-up	Gal	2.5	36.5	1	91	
Herbicide	Garlon	Gal	2.5	68.5	1	171	
Spreader/Sticker	MSO/R-11	Gal	2.5	17	1	43	
Mowing*	Contract Mowing	Hours	10	120	1	1,200	
Seed needs	Onsite native seed collection or purchase	LBS	10	20	1	200	
seeding**	No-till problem areas(contract)	Hours	2	125	2	125	
Administrative Costs:							**$800**
Annual Report	Summary	Hours	10	30	1	300	
Office Maintenance	Supplies,rent,equipment,ect	Item				500	
TOTAL Per Year Maintenance Costs							**$6,464**

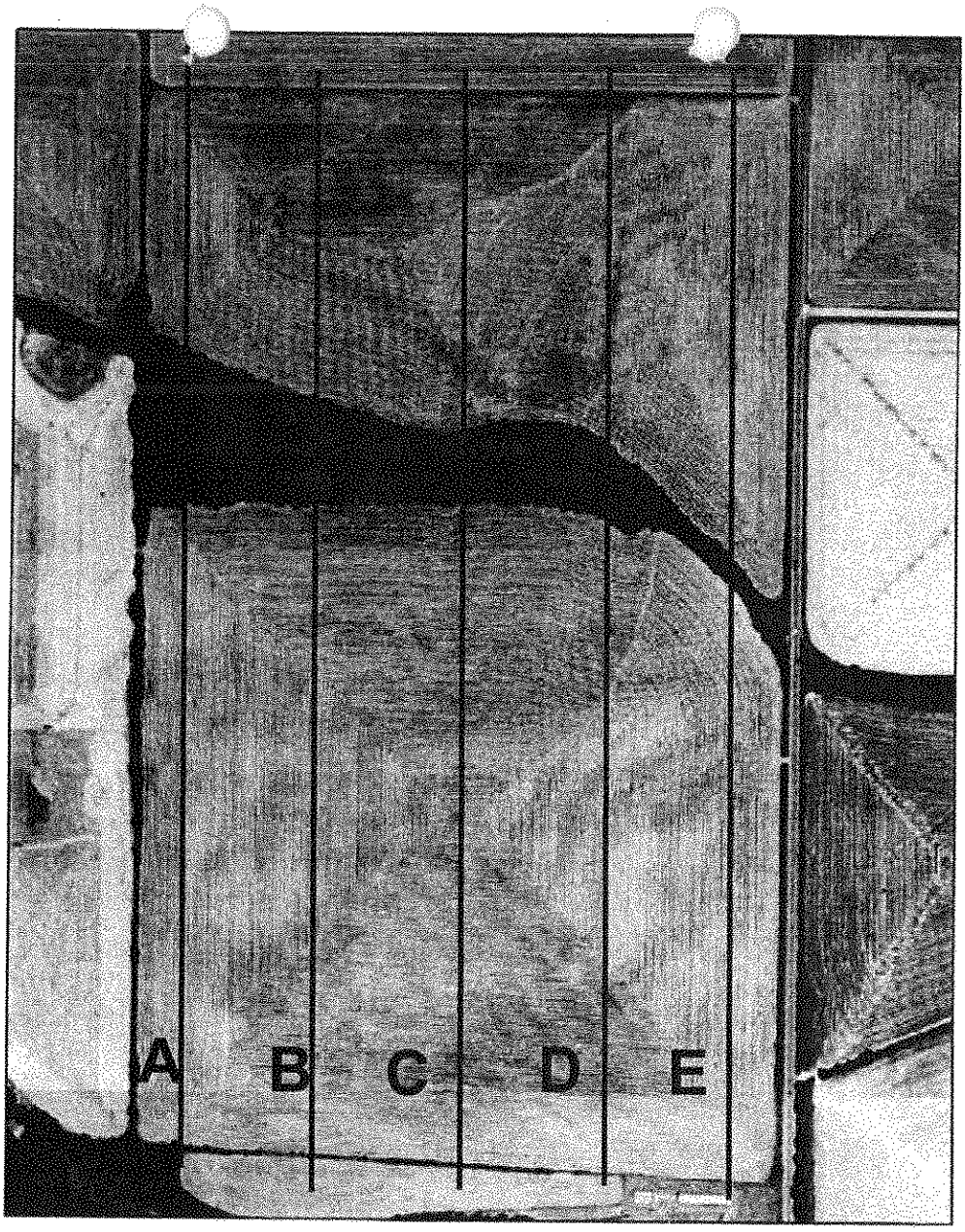
*This $ could be substituted for burning half the site in designated years which would negate the need for mowing

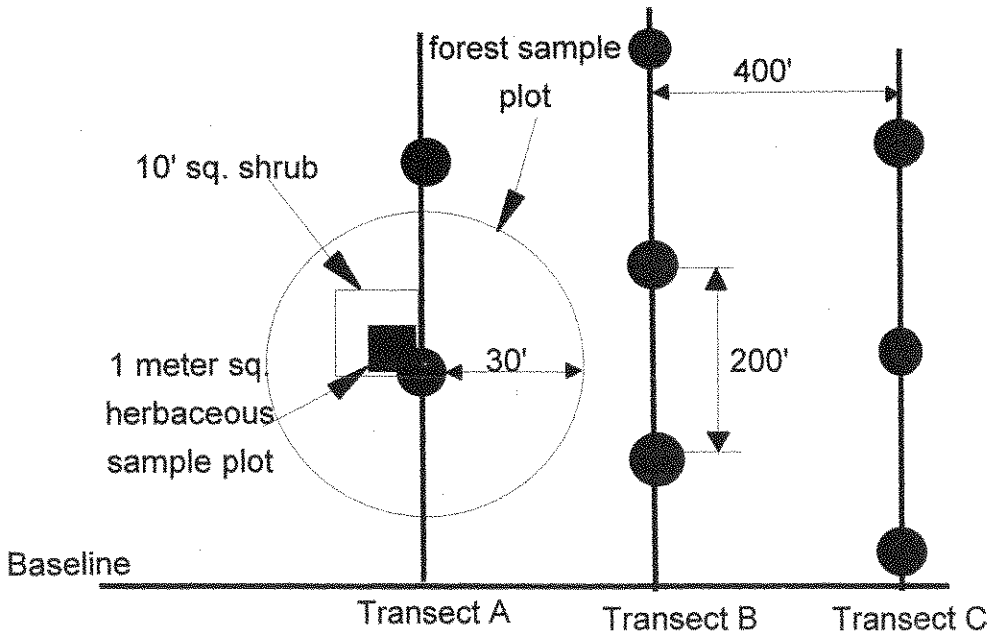
**This will provide funds to contract no-till drilling in the event certain areas fail due to unforeseen circumstances

Reporting

In order to properly guide long term management activities and to make activities 3rd party friendly an annual report will be compiled funded through the endowment fund. The report will contain a narrative summary outlining the overall condition of the bank and highlight and potential problem areas to keep an eye on the following year. It will also summarize all management activities, documenting when, where, and by what means they were accomplished. This will prove to be an extremely useful tool for pinpointing timing, and methods for treatment while providing documentation as management responsibilities shift hands. The report will also include a budget report to track expenditures and include a financial statement for the endowment. Annual monitoring photos will be taken from six points on the southern portion of the site, and four on the north to visualize changes over time. This report will be supplied to the long term steward of the site.

"Exhibit I"
Sampling Plan Methodology Map





Note: Transect "F" will be added along Bellfountain Road utilizing the same transect details to assure coverage of the created forested areas.

Sampling Plan Layout Map

Exhibit I