

Exhibit B
Response to COE Question 2

CLARIFICATION OF DISCHARGES

COE Comment 2, ¶ 1

"[W]e need you to clarify the total volume and acreage of all discharges waterward of the ordinary high water mark (elevation 2062.5) and in wetlands."

Response:

Table 2, pages 10-12 of the Joint Application for Permit, identifies the volume of each discharge based on type of dredging, water ward of the ordinary high water mark, elevation 2062.5. Table 2, Page 12 of the Joint Application for Permit summarizes the total volume as:

Dredged material permanently removed – 17,035 CY

Dredging of temporarily placed fill material – 12,945 CY

The total amount of dredging = 29,980 CY (item 7.a & 7.c on application)

Fill material permanently placed – 64,305 CY

Fill material temporary placed – 12,945 CY

The total amount of open water fill = 77,250 CY (item 7.a on application)

The fills in wetlands, water ward of elevation 2062.5-feet are 7,500 CY.

EXPLANATION OF OPEN WATER FILLS INTO SAND CREEK

Reference Section dated July 3, 2007, Exhibit E of the Supplemental Submission to Army Corps Regarding Pathway Location

The 2.71 acres is the area of open water fill between the existing normal summer pool mark and the proposed normal summer pool mark (2062.5') due to the pedestrian/bike pathway fill. To offset the 2.71 acres of open water fill, the habitat enhancement areas were added to the project, which is another 2.71 acres. There is an additional 1.57 acres of fill below the future normal summer pool mark for the toe of the fills, which brings the total to 6.99 acres, for the pedestrian/bike pathway, shoreline extension and the habitat enhancement areas that will be submerged at elevation 2062.5-feet.

You requested to separately identify each water surface acreage that will be eliminated by discharges into Sand Creek. The bank stabilization, benching, lightweight fill, pond outlet, Sand Creek Bridge Piers have been included in the total acres of open water fill 6.99 Ac. Computing these items separately would be ineffective because the sum of each item would be minuscule, individually, but the summation is included in the total. The buttress fill (shoreline extension), which is included in the 6.99 Acres is 1.56 Acres. The temporary fills acreage impacts have not been computed as acres of fill because they are temporary.

Table 1, page 7 in the Joint Application Permit provides the summary of fills into wetlands due to construction of the project. The 5.19 acres is the total area of wetlands that will be impacted with the construction of the Sand Creek Byway. Additionally, 4.05 acres of wetlands are located above ordinary high water mark elevation 2062.5-feet and 1.14 acres are located below ordinary high water mark.

COE Comment 2(a)

"The amount of dredged material you propose to discharge back into the creek. Your application indicates you propose to discharge 29,980 cubic yards of dredged material. We believe this volume should be revised to 6,543 cubic yards (comprising 6,500 cubic yards for the archaeological data recovery and 43 cubic yards for the irrigation pumps)."

Response:

David Karsann, ITD, and Barbara Benge had a phone conversation on June 29, 2006 to discuss the Corp of Engineers comments regarding the Application that was submitted on June 16, 2006. One comment that Barbara Benge requested was to make sure that all fill that is planned to be returned back into its initially excavated space (below OHWL) is actually counted as discharged fill, not a net zero amount just because it was there in the first place. Therefore, all dredging activities were summarized with the amount dredged and the amount discharged back into the excavated space.

Also, the current Table 2 as shown in the Permit Application was re-formatted to the current format as requested by Barbara Benge. The intent of the table was to summarize all proposed dredging, discharged fills both permanent and temporary into the waters of the U.S.

COE Comment 2(b)

"Your November 7, 2006 letter explained you recalculated the wetland acreage and found it was greater than that documented in the 1998 wetland delineation. Were the acreages of wetland impacts provided with your application based on the 1998 wetland acreages or your recalculated acreages?"

Response:

The impacts reported are based on the recalculated impacts. These impacts have been revised based on the April 2007 Wetland Delineation Report.

COE Comment 2(c)

"Will riprap be placed along the shoreline for bank stabilization in Wetland 1 as shown in Figures 5 through 8 on your application?"

Response:

No riprap will be placed within Wetland Area 1 as shown in Figures 5 through 8 of the application.

COE Comment 2(d)

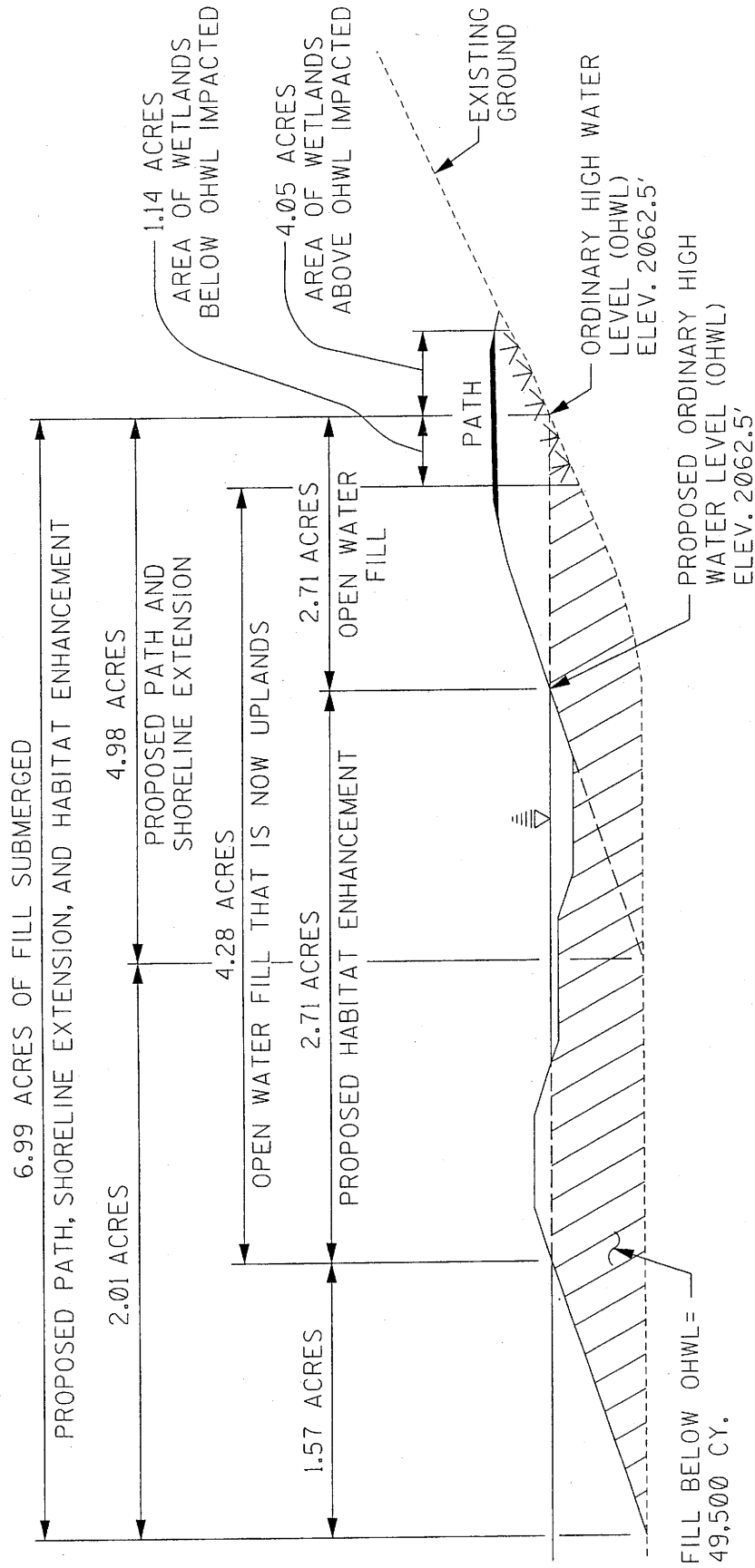
"How do you propose to protect wetlands located adjacent to project construction areas from construction impacts?"

Response:

The Contractor shall provide 10 day notice before work begins in areas adjacent to wetlands as shown on the plans or flagged. The Engineer will flag the boundaries of the wetlands that are to remain untouched. The Contractor shall retain and protect the boundary flagging throughout construction, install construction fence around wetland areas, and shall not operate within the wetland boundary. If the Project Clearance Summary plan sheet identifies that this contract requires a NPDES Permit, the Department will include a preliminary (incomplete draft) NPDES Storm Water Pollution Prevention Plan (SWPPP) in the contract. The preliminary plan contains information about project site characteristics, drainage patterns, and known areas where pollution prevention and erosion control measures are needed. If a NPDES Permit becomes required because the Contractor increases the area of disturbance, preparation of the entire SWPPP will be performed by the Contractor. Completion of a SWPPP is a required as part of the permitting process any time a NPDES Permit is required. An Erosion and Sediment Control Plan (ESCP) will be required on all contracts that do not require a NPDES Permit. The ESCP shall include a Spill Prevention Plan and shall be submitted to the Engineer for review and approval prior to ground disturbing activities. The ITD has entered into a Consent Decree (the Decree) with the United States Environmental Protection Agency (EPA) regarding certain requirements for storm water management and pollution prevention on all ITD Projects subject to the Clean Water Act (CWA) NPDES storm water construction regulations at 40 C.F.R. § 122.26(b)(14)(x) or 40 C.F.R. § 122.26(b)(15). There are certain mandatory terms and conditions of the Decree that affect the Contractor's construction activities and obligations. The Contractor is responsible for compliance with all of these items and with all Contractor-based requirements from the Decree, as well as all other Contractor responsibilities noted in the Contract. The requirements listed in this provision are necessary to comply with the Decree, the CWA, and NPDES Permits. The Contractor shall present the required SWPPP information at the pre-construction conference. The Contractor shall provide detailed information about the intended sequence of work (including the initial site preparation work to install sediment basins, sediment traps, perimeter dikes, silt fencing, etc.), pollution control methods, locations of staging areas, stockpiles, and any other ground disturbing activities. This information will be reviewed, and in conjunction with information provided by the Department, compiled into a SWPPP. The SWPPP will be signed by the Department, the Contractor, and all subcontractors performing ground disturbing work identified in the plan. The Department and the Contractor must each complete a Notice of Intent (NOI) form. Once the SWPPP is approved, the Department and the Contractor will electronically file NOI's separately. No construction work of any kind will be performed until both

NOI's are posted on the EPA website and the seven day waiting period is over. Prior to initiating any Construction Activities, the Contractor shall designate a Water Pollution Control Manager (WPCM). Contact information including name, address, and telephone number for the WPCM shall be submitted to the Engineer. The WPCM shall have attended storm water management training, presented by a third party and approved by the Department, in the twelve months prior to the beginning of Construction Activities on this Contract. The WPCM shall be responsible for ensuring compliance with the Clean Water Act.

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SUMMARY

1. FILL BELOW (OHWL) = FILL INTO OPEN WATER (57,000cy) - FILL INTO WETLANDS BELOW OHWL (7,500cy) = 49,500cy
2. ACRES OF OPEN WATER FILL THAT IS NOW UPLANDS ~ 4.28 ACRES
3. AREA OF WETLANDS IMPACTED BELOW OHWL ~ 1.14 ACRES
4. AREA OF WETLANDS IMPACTED ABOVE OHWL ~ 4.05 ACRES
5. ACRES OF FILL BELOW OHWL ~ 6.99 ACRES

JUNE 26, 2007

