

CERTIFIED MAIL - RETURN RECEIPT REQUESTED



REPLY TO:
ATTENTION OF:

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

7
EL-355
Phillis

November 21, 2003

Regulatory Division
CENAE-R-200301119

Ronald A. Klempner
New England Transrail, LLC
843 Red Road
Teaneck, New Jersey 07666



Dear Mr. Klempner:

This letter responds to your letter dated May 10, 2003, requesting comments on the proposed construction of a railroad reload center, and a determination of jurisdiction for wetlands areas, located at 53 Eames Road, Wilmington, Massachusetts.

Alan Anacheka-Nasemann of our Regulatory Division conducted a field inspection of the site on September 11, 2003. During this inspection, areas labeled on the enclosed plans as "Temporarily Impacted Wetlands" and "Approximate Existing Wetlands Boundary," were reviewed for potential jurisdiction. We note that areas designated "Permanently Impacted Wetlands" have been legally filled and/or removed pursuant to Department of the Army Permit No. 20001354, issued to Olin Environmental Management, Inc. on August 21, 2000. We also found that present conditions on the site are in full compliance with the terms and conditions of that permit.

The delineation of waters of the United States, including jurisdictional wetlands, on the drawing you submitted entitled "Eames Street Redevelopment, 51 Eames Street, Wilmington MA," on one sheet labeled, "Fig. No. 3a," and dated, "5/05/00," is accurate.

Our verification of this project's wetland delineation under the January 1987 Corps of Engineers Wetlands Delineation Manual is valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date.

The Corps of Engineers has implemented an administrative appeals process for permit denials, proffered permits for which you object to the terms, conditions and jurisdictional determinations. A Notification of Administrative Appeal Options form and flow charts explaining the appeals process and your options are enclosed with this letter. However, in order to retain your right to appeal, you must submit the enclosed NAAO form within 60 days of this letter's date.

Enclosed with this letter is a form explaining the basis for our jurisdictional determination. For appeals of permit denials, proffered permits and approved jurisdictional determinations, you must complete Section II of the NAAO form ("Request for Appeal") and submit it along with any supporting or clarifying information to the following address: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic, Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700, Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. Questions regarding the Corps appeals process should be directed to Ms. Joanne M. Barry, Chief, Policy and Technical Analysis Branch at (978) 318-8156 or at the above address.

We have further determined that a Department of the Army permit is not required for your proposed construction of a Rail Reload Facility on the subject site. This determination is based on the information on the attached plans in one sheet, entitled "PROPOSED RAIL RELOAD FACILITY, WILMINGTON, MA," and dated, "7-21-03."

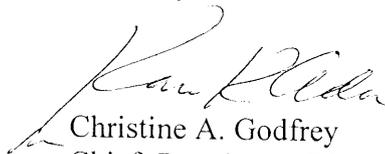
Our regulatory jurisdiction encompasses all work in or affecting navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899 and the discharge of dredged or fill material into all waters of the United States, including adjacent wetlands, as well as the excavation and grading within those waters, under Section 404 of the Clean Water Act. Since your proposal avoids impacts to existing waters of the United States, it does not include any of the aforementioned activities, and therefore, a Department of the Army permit is not required.

Should you modify your proposal to entail a discharge into waters of the United States, including wetlands located on the site, you must contact this office for information on Department of the Army permit requirements. Please note that performing work within our jurisdiction without a Corps of Engineers permit can result in prosecution by the U.S. Government. Violations of Section 10 can result in criminal prosecution with fines ranging from \$500 to \$2,500 per day of violation and/or imprisonment for up to one year. Violations of Section 404 are punishable by civil fines of up to \$25,000 per day and/or imprisonment for up to one year.

Finally, our Corps permit process does not supersede any other agency's jurisdiction. Therefore, if other Federal, State, and/or local agencies have jurisdiction over your proposed activity, you must receive all other applicable permits before you can begin work.

If you have any questions regarding this letter, please contact Alan Anacheka-Nasemann, of my staff, at (978)-318-8214.

Sincerely,


Christine A. Godfrey
Chief, Regulatory Division

Enclosures

Copies Furnished:

James Sprague, DEP Northeast Regional Office, Wetlands and Waterways, 1 Winter Street,
Boston, Massachusetts 02108.

Larry J. Welch, GEI Consultants, Inc., 1021 Main Street, Winchester, Massachusetts
01890-1970

Neil Sullivan, ICF, Incorporated, 9300 Lee Highway, Fairfax, Virginia 22031; Attn:
Finance Docket No. 34391 - Environmental Comments

Todd Stribley, ICF, Incorporated, 9300 Lee Highway, Fairfax, Virginia 22031

Victoria Rutson, Chief, Section of Environmental Analysis, Surface Transportation Board
Washington, DC 20423

Paul R. DeRensis, Deutsch-Williams, 99 Summer Street, Boston, Massachusetts 02110-1213

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: New England Transrail, LLC		File Number: 200301119	Date: 21 Nov 03
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

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

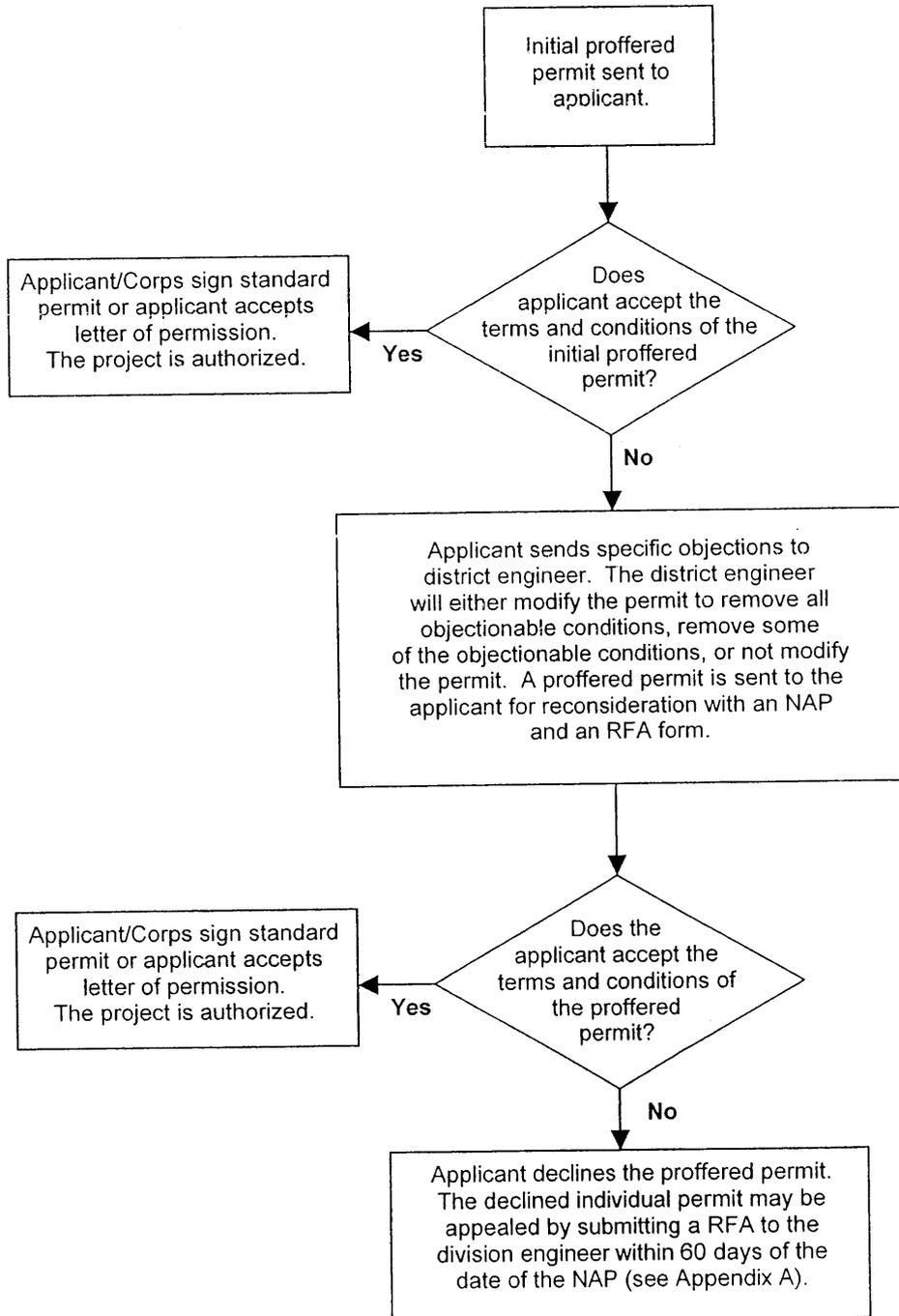
A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

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

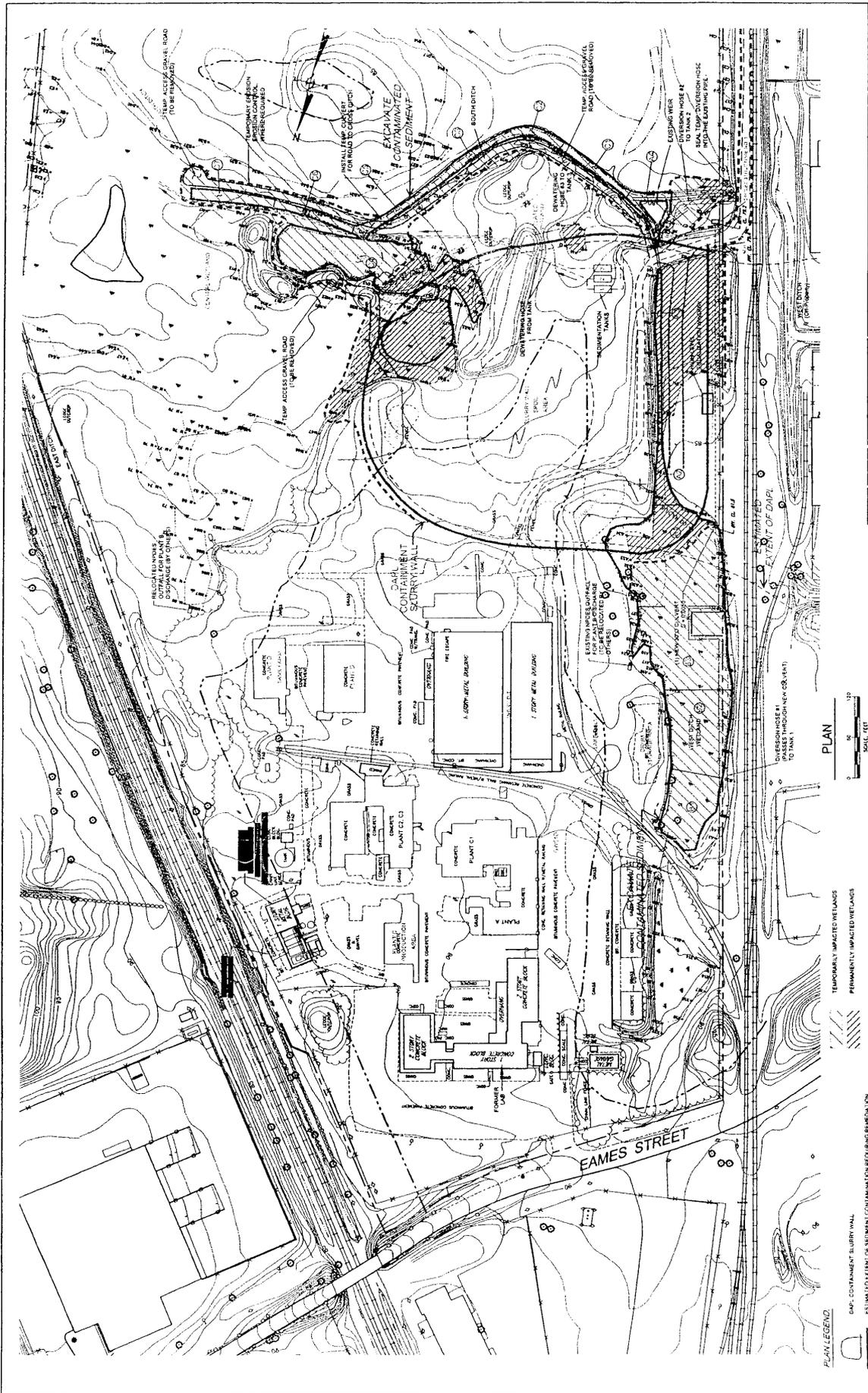
B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the District Engineer for final authorization in care of "Regulatory Division." If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the Division Engineer in care of: James W. Haggerty, Regulatory Appeals Review Officer, US Army Engineer Division, North Atlantic Fort Hamilton Military Community, Bldg. 301, General Lee Avenue, Brooklyn, NY 11252-6700 Telephone: (718) 765-7150, E-mail: James.W.Haggerty@nad02.usace.army.mil. The Division Engineer must receive this form within 60 days of the date of this notice.

Applicant Options with Initial Proffered Permit



Appendix B



PLAN LEGEND

- DAM, CONTAINMENT SLURRY WALL
- ESTIMATED LIMIT OF SEDIMENT CONTAMINATION REQUIRING REMEDIATION
- EXISTING CONTOURS (FT. NGVD)
- APPROXIMATE EASTING WETLANDS BOUNDARY
- STREAM
- SEDIMENT REMEDIATION SCHEME
- TEMPORARY BERM (TYP.) SEE FIG. NO. 38 FOR DETAILS

NOTES

1. BASE PLAN PROVIDED BY DAW F. PERKINS, INC.
2. TEMPORARY IMPACTS TO EXISTING VEGETATED WETLANDS - 4/8/93 BY
3. TEMPORARY IMPACTS TO EXISTING VEGETATED WETLANDS - 4/28/97 BY
4. TEMPORARY IMPACTS TO BANK WETLANDS - 1/11/01
5. PERMANENT IMPACTS TO BANK WETLANDS - 1/11/01

PLAN

SCALE: 1" = 10'

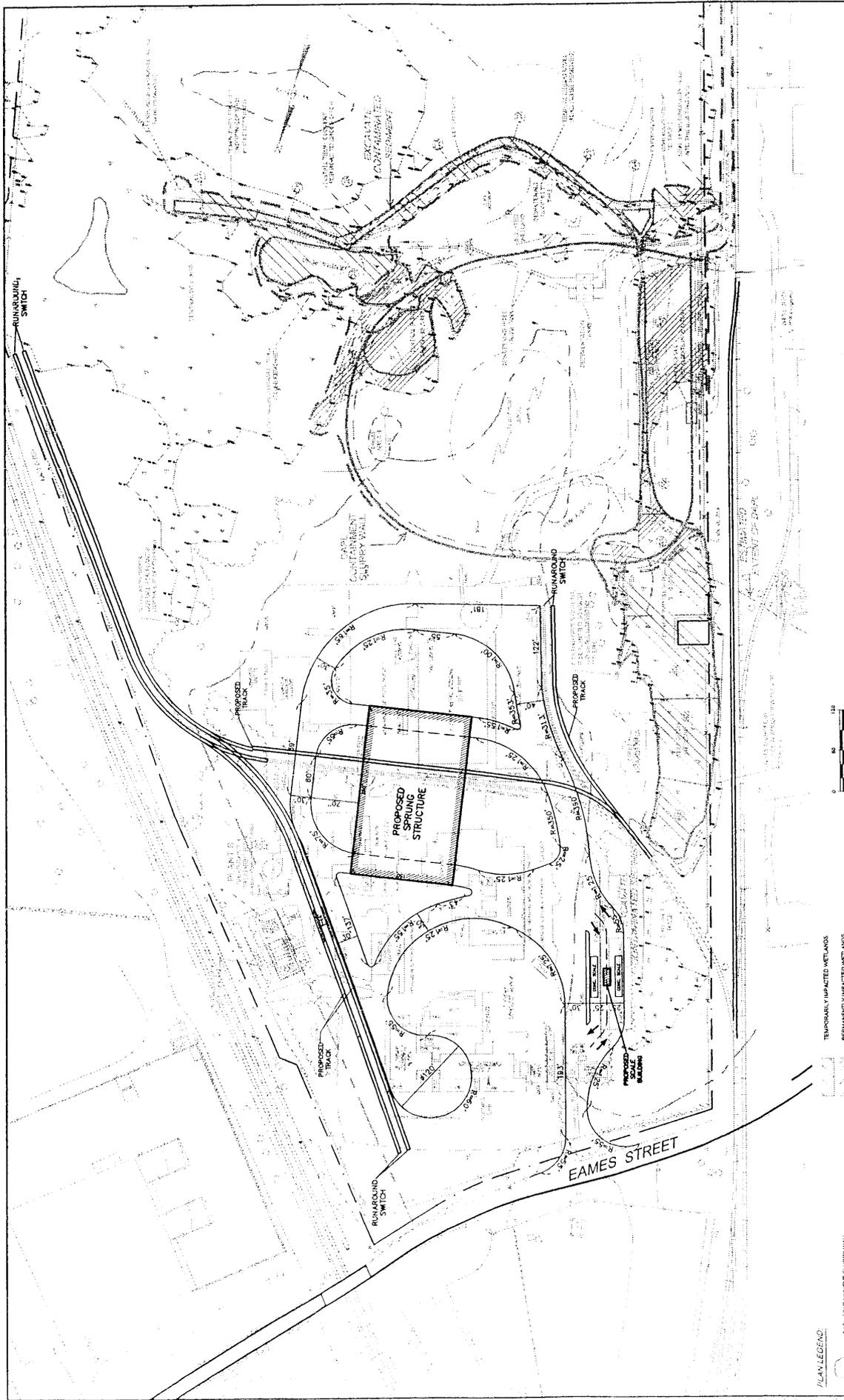
DATE: 5/05/00

NO.	DATE	DESCRIPTION	DES.	DR.	CHK.	APP.
1	5/05/00	FOR CONSTRUCTION	JKM			
2	10/20/00	FOR BID	JKM			
3	12/20/00	FOR REVISION	JKM			

DESIGNED BY: **MPW**
 CHECKED BY: **JKM**
 PROJECT: **51 EAMES STREET**
 DATE: **5/05/00**

Client: Olin Corporation, Charleston, Tennessee
Contractor: GEI Consultants, Inc., WINCHESTER, MASSACHUSETTS

Project: Eames Street Redevelopment, 51 Eames Street, Wrentham, MA
Plan: EROSION CONTROL / DEWATERING / STOCKPILING PLAN
FIG. NO.: 3a
SHEET NO.: 4 OF 12
DATE: 9/2008



PLAN LEGEND

- DAW CONTAINMENT SLURRY WALL
- ESTIMATED EXTENT OF SEGMENT CONTAMINATION REQUIRING REMEDIATION
- EXISTING CONTOURS (FT. NGVD)
- APPROXIMATE EXISTING WETLAND BOUNDARY
- STREAM
- SEGMENT REMEDIATION BOUNDARY
- TEMPORARY BERM (TYP.) SEE FIG. NO. 38 FOR DETAIL
- TEMPORARILY IMPACTED WETLANDS
- PERMANENTLY IMPACTED WETLANDS
- 100 FT BUFFER ZONE

NOTES:

1. BASE PLAN PROVIDED BY OMA F. FERKINS, INC.
2. TEMPORARY IMPACTS TO BORDERING WETLANDS = 91,210 S.F.
3. TEMPORARY IMPACTS TO WETLANDS = 44,207 S.F.
4. PERMANENT IMPACTS TO WETLANDS = 1731 S.F.
5. PERMANENT IMPACTS TO BANK WETLANDS = 710 S.F.

0 30 60 90 120
SCALE: 1" = 60'

PROJECT TITLE: PROPOSED RAIL RELOAD FACILITY
WILMINGTON, MA

SHEET TITLE: SITE LAYOUT

FILE NO.	PROJECT NO.	SCALE	DATE
20021-02EXH01 DWG 2002102B0E	1-60	1"=60'	7-21-03

APPROVED BY: EP
CHECKED BY: EP
DRAWN BY: SFC

Cubellis Saivetz Associates
 1000 State Street, Suite 200
 Wilmington, MA 01897
 Tel: 978-666-7777
 Fax: 978-666-7778
 Web: www.csa.com

**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
BASIS OF JURISDICTIONAL DETERMINATION**

Applicant: New England Transrail, LLC
Date: 21 Nov 2003

File No: 200301119

I. Jurisdictional Determination

No waters of the United States are found on this site. (See 1)

All wetlands and/or waters on this site are waters of the U.S. (See 2 and 3)

Some wetlands and/or waters on this site are waters of the U.S., others are not, as described in the Corps-approved delineation. (See 1, 2 and 3)

1. The jurisdictional determination outlined in the attached EA/SOF or letter, which states there **are no** waters of the United States present at the site, is based on the following:

The site consists entirely of uplands.

The Corps has made a case-specific determination that although there are waters present on the site, they are not Waters of the United States based on the following:

Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR 328.3.

Prior converted cropland, pursuant to 33 CFR Part 328(a)(8) dated August 25, 1993.

Non-tidal drainage or irrigation ditches excavated on dry land.

Artificially irrigated areas, which would revert to upland if the irrigation ceased.

Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.

Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.

Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a) (C-H below).

Isolated wetland with no nexus to interstate commerce.

Other (explain) _____

Comments: _____

2. The jurisdictional determination outlined in the attached EA/SOF or letter, which states there **are** waters of the United States present at the site, is based on the following:

The waters on the site are subject to the ebb and flow of the tide.

The waters present at the site are part of the territorial seas (baseline to 3-mile limit).

The waters on the site have been determined to be navigable Waters of the United States for New England (list attached.)

The waters on the site are interstate waters, including interstate wetlands.

_____ The waters present at the site contain impoundments of waters otherwise defined as waters of the United States.

 X The waters present at the site are part of a tributary system to waters identified in this section.
(South Ditch and West Ditch)

 X There are wetlands present at the site which are adjacent to waters (other than waters that are themselves wetlands) identified in this section. Note that adjacency means bordering, contiguous or neighboring. Adjacency for neighboring wetlands includes ecological connectivity.
(Wetlands adjacent to above ditches)

_____ The waters on the site are other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes or natural ponds containing a nexus to interstate commerce, and are navigable.

The nexus to interstate commerce consists of:

_____ Recreation or other purposes

_____ Fish or shellfish

_____ Industrial or commercial purposes

_____ Commercially saleable timber products

_____ Sand, gravel, oil, gas, clay, peat, or other commodities of commerce

_____ Other (explain) _____

Comments: _____

3. The lateral extent of the waters of the United States at the site, including wetlands, as identified on the plans in the file was based on one or more of the following:

 X The limit of Corps jurisdiction for wetlands has been determined by the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and guidance supporting the Manual, based on the following:

 X Wetland delineation data sheets.

 X Site specific information on soils, vegetation, and hydrology.

 X Field verification conducted by the Corps on **11 Sep 2003**.

_____ The limit of Corps jurisdiction in a waterway has been determined to be:

_____ OHW (non-tidal)

_____ MHW (for Section 10)

_____ HTL (for Section 404)

Comments: **See attached Site Visit Report.** _____



Alan R. Anacheke-Nasemann
Sr. Project Manager/Ecologist
Regulatory Branch

**U.S. ARMY CORPS OF ENGINEERS
NEW ENGLAND DISTRICT
NON-TIDAL NAVIGABLE WATERS OF THE UNITED STATES**

The following non-tidal waters have been determined to be Navigable Waters of the United States subject to permit jurisdiction in the New England District area.

Maine – Kennebec River to Moosehead Lake; Penobscot River to the confluence of the East and West Branch at Medway, Maine; Lake Umbagog within the State of Maine.

New Hampshire – Merrimack River from the MA – NH state line to Concord, New Hampshire; Lake Umbagog within the State of New Hampshire; Connecticut River to Pittsburg, New Hampshire.

Massachusetts – Merrimack River to the New Hampshire state line; all of the Connecticut River within the Massachusetts state line.

Connecticut – Connecticut River to the Massachusetts state line.

Vermont – Navigability studies and determination has been completed in Vermont. The following lists show the results of these determinations:

Navigable waterways based on present or potential future use for interstate commerce:

Lake Champlain
Lake Memphremagog
Connecticut River
Ompompanoosuc River to Mile 3.8
Waits River to Mile 0.9

Navigable waterways based on past historical use for interstate commerce:

Black River from its mouth to Mile 25 Craftsbury
Battenkill River to Mile 50 Manchester
Lamoille River from its mouth to Mile 79 Greensboro
Missisquoi River from its mouth to Mile 88.5 Lowell
Otter Creek from its mouth to Mile 63.8 Procter
Winooski River from its mouth to Marshfield
Moose River from Passumpsic River to Victory Town line
Nulhegan River from its mouth to its source including the East Branch, Back Branch,
and Yellow Branch
Paul Stream from its mouth to its source
East Branch, Passumpsic River from Passumpsic River to East Haven
Passumpsic River from its mouth to the East Branch
Wells River from its mouth to Groton Pond
White River from its mouth to its source

MEMORANDUM THROUGH:

Environmental Resource Section

Joanne Barry, Chief, CENAE-R-PT

Crystal Gardner, Acting Chief, CENAE-R-PEA

FOR: File

SUBJECT: Site Visit Report, File No. 200301119: New England Transrail, LLC

1. **Background Data:**USGS Quad: Reading, MA; 1987:

The USGS map shows the northern half of the site as cleared, developed and at a higher elevation than the southern half. The southern half is shown as forested and flat, with marsh symbols along the SE side. There are no streams shown, it appears that the site drains to the east, under the Boston and Main Railroad Tracks into a highly modified stream, which drains to the south, entering into a wetland that forms the headwaters of the Aberjona River.

National Wetland Inventory: Wilmington, MA 7.5' Quad, 1977:

The NWI wetland shows a PFO1 wetland traversing the site, seemingly flowing from west to east. The wetland is much more extensive than indicated by the USGS Quad marsh symbols. The wetland abruptly terminates at the Boston and Main railroad track. Presumably, the track has influenced the hydrology of the wetland, causing water to back up more extensively than would be the case without the track.

NRCS (SCS) Soil Survey: Middlesex County, MA; 1989 (INTERIM):

The following soil types occur on the site:

- 5 - Udorthents, sandy
- 7B - Charlton-Hollis Rock outcrop complex, 3-8% slopes
- 45 - Swansea Muck, Terric Medisaprists, VP drained - **Hydric**
- 46 - Freetown Muck, Typic Medisaprists, VP drained - **Hydric**
- 114B - Canton fine sandy loam, 3-8% slopes, ext. stony
- 259 - Udorthents Urban land complex, 0-25% slopes
- 555 - Udorthents, wet substratum

The Swansea, Freetown and Udorthents wet substratum soils are all located within the NWI wetland noted above.

Other Resource: MassGIS Color Infrared Aerial Photo; 2001:

The areal photograph shows a large ponded area, seemingly artificially created. The wetland appears to drain under the Boston and Maine tracks, but there is no sign of a stream on the east side. It is likely that the site drains under the track and an adjacent development and Woburn Street before daylighting on property southeast of the site.

Other Resource: Olin Corp. delineation map; 5/05/00

The Olin map delineates several wetlands, showing some as temporarily impacted and some as permanently impacted. The area that appears ponded on the above map is actually part of a slurry wall spoil area, evidently for site remediation that was done in the recent past.

2. **Site Visit Details:**

Date of Inspection: 11 Sep 2003

Location: NE Transrail site off Eames St., and existing RR track,
Wilmington, MA

Weather: Clear, 70°F

Participants: ARN

3. **Observations:**

I walked most of the site, starting from the north end. The wetlands here consist largely of invasive purple loosestrife (*Lythrum salicaria*), with some additional areas of cattail (*Typha latifolia*), red-osier dogwood (*Cornus stolonifera*), speckled alder (*Alnus rugosa*) and smartweed (*Polygonum lapathifolium*). The wetland boundary is correctly flagged, but the numbering system on these flags does not match the numbering convention from the Olin delineation map. It thus appears that another delineation of the site has been conducted more recently. Nevertheless, the more recent delineation does not change the mapped wetland boundary from the Olin drawing.

Summary:

All wetlands have been correctly flagged. Wetlands shown on the Olin map as “temporarily impacted wetlands” have been restored. The permanently impacted wetlands are incorporated into the slurry wall spoil area. The spoil area itself consists of geotextile fabric anchored with stakes and tires. It appears to be functioning correctly.

It was necessary to complete a record search to document that a permit had been issued previously, to Olin Corporation, authorizing the wetland impacts noted above. It also appears from the map provided by New England Transrail that there will be no additional wetland impacts from construction of the railroad spur track.



Alan R. Anacheke-Nasemann, PWS
Sr. Project Manager, CENAE-R-PEA

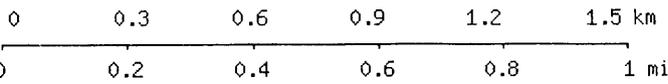
5. **References**

Federal Register November 13, 1986, 33 CFR 328.3(a) and (c)

Federal Register March 9, 2000, Preamble, II. General Comments - Jurisdictional Issues, pages 12823-4.

Memorandum, CENED-OD-R (Sheehan), 9 May 91, Subject-Revised Guidance-Adjacent Wetlands in New England.

DeGraaf, R. M. and Rudis, D. D. 1986. *New England Wildlife: Habitat, Natural History, and Distribution*. Gen. Tech. Rep. NE-108. Broomall, PA: US Department of Agriculture, Forest Service, Northeastern Forest Experiment Station. 491 pp.



Map center is 42° 31' 35"N, 71° 09' 14"W (NAD27)

Reading quadrangle

Projection is UTM Zone 19 NAD83 Datum



MN=-14.232
GN=1.456

topozone

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ISBN Number	0607234695
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USGS Entity ID	MPTMA0379PP01
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Area Covered	7.5 x 15 minute
Projection	Universal Transverse Mercator
<hr/>	
Northwest corner	42.6250°N, -71.2500°W
Northeast corner	42.6250°N, -71.0000°W
Southwest corner	42.5000°N, -71.0000°W
Southeast corner	42.5000°N, -71.0000°W

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71°

WILMINGTON, MASS

4/77

MBIOLOGY EXAMPLE

NOTES TO THE USER

- Wetlands which have been field examined are indicated on the map by an asterisk (*)

MassGIS/MHD 2001 Color Orthophoto Map - Olin/NE Transrail Site, Wilmington, MA



Legend

Mass. Towns Boundaries

Mass Towns Labels

MHD Roads Route Numbers

MHD Roads



Limited Access Highway



Multi-lane Hwy, Not Limited Access



Other Numbered Hwy

Color Orthos 2001

