

MEMORANDUM OF AGREEMENT

This agreement regarding the responsibilities for the Codornices Creek Restoration and Trail Project funded by the “California River Parkways Grant Program” is entered into on _____, 2008, by the United States Postal Service (USPS) and the City of Albany, CA.

Introduction

- A. A grant application has been submitted to, and a grant awarded by, the State of California Resources Agency, California River Parkways Grant Program (see grant agreement and application) to the City of Albany.
- B. The grant-funded project will restore Codornices Creek and construct a pedestrian and bicycle trail between 6th street and 8th street in the City of Berkeley.
- C. The properties where grant activities will occur are owned by USPS and the University of California, in approximately equal areas. No grant funds are to be used to buy or encumber property.
- D. A portion of the project will be located on USPS property upon which the USPS has agreed to provide easements to the City for conservation, maintenance and public access purposes, per the attached License and Easement Agreement for Modifications to USPS Parking Lot Facilities dated April 18, 2006 (*Attachment #2*).

The City of Albany agrees to the following:

- A. The City of Albany will maintain the creek and trail and all installed amenities for a minimum of 25 years from the start date of this agreement, per the assigned responsibilities in the attached Memorandum of Understanding between the City of Albany, the City of Berkeley and the University of California. (***Attachment #1***)
- B. The City of Albany will manage the grant and take overall responsibility for the execution of the project in a timely and effective manner.
- C. The City of Albany will complete all aspects of the creek restoration and trail construction, which will occur on property owned by the USPS and, per the August 5, 2004 Memorandum of Agreement between the cities of Albany, Berkeley and the University of California, will maintain, repair, and improve the USPS property which is the subject of the Maintenance and Conservation Easement area and Public Access Easement area, as identified in the License and Easement Agreement for Modifications to USPS Parking Lot Facilities and its Exhibits, for as long as the City of Albany retains either easement, and otherwise for no less than 25 years from the start date of this agreement.
- D. The City of Albany will resume responsibility for the ongoing maintenance and operations of the project for the required minimum of 25 years if this Agreement is cancelled.

The USPS stipulates and/or agrees to the following:

- A. The USPS hereby permits the City of Albany to access the property and to develop and maintain the Codornices Creek Restoration and Trail Project, in accordance with the terms and conditions specified in the License and Easement Agreement for Modifications to USPS

Parking Lot Facilities.

- B. The City of Albany will implement the creek restoration and trail construction project, including the following activities: completing all necessary environmental review, managing construction activities, and reporting activities to USPS.

Agreement length:

- A. This agreement, in accordance with the criteria established by the California River Parkways Grant Program, is to be in effect for a minimum of 25 years, or until superseded by the recorded conservation and maintenance easement. A copy of the recorded easement will be sent to the State of California Resources Agency, Bonds and Grants.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date first written above:

The United States Postal Service

By: _____
(Name, Title)

CITY OF ALBANY, a Municipal Corporation

By: _____
(Name, Title)

LICENSE AGREEMENT

This License Agreement is made this Feb. 28, 2005 by and between the United States Postal Service ("Licensor") and the City of Albany, CA ("Licensee").

Whereas, Licensor is the owner of that certain property (hereinafter the "Property") described as the DDU, located at 1150 8th Street, Berkeley, CA, which property is the subject of this License Agreement, and

Whereas, Licensee desires to enter upon the Property for the purpose of conduct such soils testing, geological, surveying, environmental investigations and assessments, and other tests as the City deems appropriate to support the Codornices Creek Restoration stream improvement project at the DDU and adjoining undeveloped property, generally lying between Harrison Street and Codornices Creek, between 6th and 8th Streets, Berkeley, CA, and Licensor is willing to permit such entry upon the terms and conditions as hereinafter set forth.

Now, therefore, it is agreed as follows:

1. Licensor hereby grants to Licensee, effective as of the date hereof, a nonexclusive license and permission to enter upon the Property (the "License"), for the purpose set forth above and for no other purpose. Licensee's use of the Property pursuant to such permission shall be strictly governed by the terms of this Agreement. Licensee's use of the Property shall not interfere with the reasonable use and enjoyment thereof by Licensor or any person claiming through or by Licensor.
2. Licensee will comply with and will cause all other persons entering upon the Property pursuant to the License to comply with all applicable governmental laws and regulations concerning the work to be performed by Licensee and will, promptly upon completion of its work and at its sole expense, cause the Property to be restored to the condition it was in on the date of execution of the License.
3. Licensor shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from use of the Property by Licensee or any of its agents, employees, licensees, or invitees caused by or arising from any act or omission of Licensee, its agents, employees, or licensees.
4. Licensee shall indemnify and hold Licensor harmless of and from any and all loss, cost, liability, obligation, damage, injury or expense, including reasonable attorney's fees, which may arise by reason of the violation of law, ordinance, or regulation by Licensee or by reason of injury to or death of a person(s), damage to property, or claims of lien for work performed and/or materials or supplies furnished, arising out of or in connection with Licensee's use of the Property.
5. This Agreement is personal to Licensee and Licensee shall not assign or otherwise transfer any rights herein without prior written consent of Licensor.
6. The term of this Agreement shall commence on the date first stated above and shall, except as to Paragraphs 3 and 4, terminate on May 1, 2005. If Licensee shall be in breach of any of its obligations under this Agreement and fail to cure such breach within ten (10) days of a written notice from Licensor specifying the nature of such breach, Licensor shall have the right to terminate this Agreement by written notice to Licensee effective the date of such notice. No termination or expiration of this Agreement shall relieve Licensee of its

obligation to perform those acts required to be performed either prior to or after its termination.

7. Licensor, its authorized representatives, employees, or agents shall be entitled to inspect Licensee's work upon the Property at any time and from time to time.
8. No work relating to Codornices Creek testing, investigating or assessing shall be performed by Licensee under the terms of this Agreement until Licensee has advised Licensor's Site Manager (510-649-3135), of the schedule for performance of the work and received approval for such work from Charles Patterson.
9. Notices, requests, or demands by either party shall be in writing and shall either be personally served or be given by certified mail, return receipt requested, postage prepaid, and addressed to the following addresses:

To Licensor: Laureen A. Yamakido, Contracting Officer
U.S. Postal Service
Pacific Facilities Service Office
395 Oyster Point Blvd., Suite 225
South San Francisco, CA 94080-0300

To Licensee: Barry Whittaker, Project Manager, for
Ann Chaney, Community Development Director
1000 San Pablo Avenue
Albany, CA 94706
510-524-8170 (cell 510-455-1835)

Notices, requests or demands shall be deemed received on the day of delivery, if personally served, and upon the expiration of forty-eight (48) hours from the time of deposit in a United States Post Office or mailbox, if sent by mail.

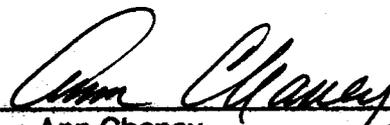
10. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and no supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the parties.
11. This Agreement shall be construed and enforced in accordance with, and governed by, Federal law.
12. Licensee agrees to furnish Licensor with copies of all data obtained from its activities undertaken pursuant to this License.

In witness whereof, each of the parties has caused this License Agreement to be executed as of the day and year first written above.

UNITED STATES POSTAL SERVICE

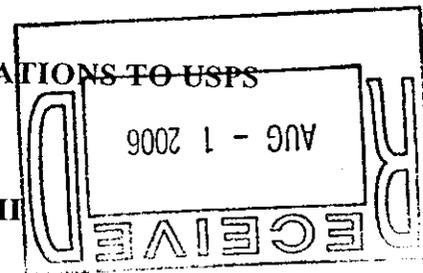
CITY OF ALBANY


Laureen A. Yamakido
Contracting Officer

By: 
Ann Chaney
Its: Community Development Director

LICENSE AND EASEMENT AGREEMENT FOR MODIFICATIONS TO USPS PARKING LOT FACILITIES

Lower Codornices Creek Renovation – Phase II



THIS AGREEMENT, dated April 18, 2006, is between the CITY OF ALBANY and the CITY OF BERKELEY, California municipal corporations, herein referred to individually as ALBANY and, BERKELEY, collectively as "PROPONENTS" and UNITED STATES POSTAL SERVICE, herein referred to as "USPS".

WHEREAS PROPONENTS are undertaking the restoration and improvement of Lower Codornices Creek between 5th Street and San Pablo Avenue within Albany and Berkeley ("the Project"); and WHEREAS ALBANY has prepared preliminary plans entitled Creek Restoration & Site Improvement Plans, Lower Codornices Creek, dated July 23, 2004, Sheet L-1 being 6th Street to 8th Street, (the "Preliminary Plans") which plans have been reviewed and found acceptable by USPS, and are attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS USPS owns the property on the South side of Codornices Creek between 6th and 8th Streets, Berkeley (the "Premises") on which is located a parking area and associated improvements; and

WHEREAS USPS is desirous of cooperating with PROPONENTS in the implementation of restoration and improvement work on Lower Codornices Creek; and

WHEREAS PROPONENTS wish to obtain licenses to enter the area and do work and easements over the existing Lower Codornices Creek channel and adjacent lands for the work; and

WHEREAS ALBANY has developed plans entitled Creek Restoration and Site Improvement Plans, Lower Codornices Creek, Phase II, Post Office Parking Lot, Civil Site Plan C-5, dated April 20, 2005, and Post Office Wall S-3, dated March 22, 2005 (collectively, the "Plans"), which plans have been reviewed and found acceptable by USPS, and are attached hereto and incorporated herein as Exhibit "B"; and whereas the Plans require completion of certain work generally described as: (i) removal and replacement of 370 feet, more or less, of 10.5 foot high split face concrete masonry unit ("CMU") block wall along the creek and around the USPS parking area; (ii) removal of landscaped islands within the USPS parking area; (iii) drainage modifications and pavement and drainage repairs as required to restore the quantity and quality of parking stalls lost in the block wall relocation; (iv) associated drainage modifications; and (v) construction of a temporary parking lot on USPS property, accessed from 6th Street (collectively, the "Work"); and

WHEREAS ALBANY has caused the preparation of a map and legal description

(prepared by Kister, Savio & Rei) for that portion of the USPS property needed for the restoration and improvement of Lower Codornices Creek (the "Improvement Area"), which map and legal description has been reviewed and found acceptable by USPS and is attached hereto and incorporated herein as Exhibit "C"; and

WHEREAS ALBANY has also developed a plan and map entitled Codornices Creek Restoration Limits of Work – Phase II-A on USPS property (6th Street to USPS SMU Wall), dated November 1, 2005 ("Limited Work Plans", attached hereto and incorporated herein as Exhibit "D"), identifying thereby in those portions of the Improvement Area in which a portion of the Work can be performed without requiring relocation of the CMU Wall and relocation of parking facilities.

NOW, THEREFORE, the parties hereto agree as follows:

1. USPS hereby grants to PROPONENTS a license to enter onto the Premises to perform the Work, and hereby agrees, subject to satisfaction of the conditions set forth in section 3, below, to grant to PROPONENTS, (i) a Maintenance and Conservation Easement over the Improvement Area; and (ii) a Public Access Easement over a more limited portion of the area to be subsequently described, but being generally the 20 feet adjacent to and northerly of the new relocated CMU block wall. USPS will execute and deliver to the PROPONENTS Easements in a form to be mutually agreed upon within ten (10) business days after receipt from PROPONENTS that PROPONENTS commit to performing all of the Work. The Public Access Easement shall revert to USPS if PROPONENTS have not completed all of the Work within five years of executing the public access easement document.

2. Within the area designated on the Limited Work Plans, PROPONENTS may conduct grading, paving, planting, irrigation, and other Work for the creek restoration project specified in the Limited Work Plans, without carrying out the remaining portion of the Work, subject only to the condition that PROPONENTS relocate the fence from 6th Street to the USPS CMU wall as indicated on the Limited Work Plans.

3. If PROPONENTS complete only that portion of the Work set forth in the Limited Work Plans, PROPONENTS will actively pursue grants and funding for relocation of the USPS CMU wall and parking areas. In the interim, for a period of up to five (5) years following construction, PROPONENTS shall be allowed to enter onto that portion of the Premises which is north of the relocated fence line, west of the USPS CMU wall for monitoring, maintenance and plant replacement work as may be required from time to time by one or more of the Permitting Agencies. USPS is under no obligation to grant the permanent easements described in Section 1, above, until PROPONENTS commit to performing the entire Work (including relocation of the USPS CMU wall and parking as indicated on the Improvement Plans).

4. PROPONENTS will pursue grants and other funding to enable PROPONENTS to complete the Work at the earliest practical time. PROPONENTS shall not be obligated to perform the Work unless necessary funds are secured. If PROPONENTS start the Work, PROPONENTS shall finish the Work in a timely fashion.

5. PROPONENTS shall provide USPS with at least two (2) days advance notice of its intention to enter the Premises for the purposes stated in this License Agreement.

6. PROPONENTS, including their employees, contractors, and agents, shall not unreasonably interfere with USPS operations, nor shall PROPONENTS obstruct the free flow of pedestrian or vehicular traffic on the Premises.

7. PROPONENTS, including their employees, contractors, and agents, shall comply with all applicable laws, regulations and ordinances in exercising their rights and obligations under this License Agreement and shall, at their sole expense, secure all necessary permits and authorizations in connection herewith.

8. PROPONENTS shall be responsible, at their sole cost and expense, for all maintenance, repair, and improvement of the easements described in Section 1.

9. PROPONENTS, for themselves, their employees, agents, and contractors, shall indemnify, defend, and hold USPS harmless from any and all claims, demands, actions, suits, damages, costs, penalties, fines or expenses (including attorney's fees) caused by, arising from, and/or related to, PROPONENTS, their employees', agents', and/or contractors' (i) performance of the activities referred to in this License Agreement (ii) the improvements to USPS site, wall and parking lot; and/or (iii) any use of the easement areas. As it pertains to the temporary USPS parking lot at 6th Street, PROPONENTS' hold harmless will terminate upon reopening of replacement permanent parking within the block wall enclosed parking lot.

10. PROPONENTS shall leave graveled temporary parking lot improvements permanently in place for the benefit of USPS, and USPS may use them as they see fit.

11. PROPONENTS, including their employees, contractors and agents, prior to any Work completed on the USPS site, must complete the postal form titled "Basic Security Clearance Requirements." The postal form shall be submitted to the following USPS contracting officer:

LAUREN YAMAKIDO
PACIFIC FACILITIES SERVICE OFFICE
395 OYSTER POINT BLVD SUITE 225
SO SAN FRANCISCO CA 94080-0300

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first show above.

CITY OF ALBANY ("ALBANY"):

UNITED STATES POSTAL SERVICE:

By: Beth Pollard
City Administrator

By: Janeen Yamato

Attest John
City Clerk

Title Contracting Officer

APPROVED AS TO FORM:

Robert Zwick
City Attorney

Registered by:

Jan-Marie Hoq
City Auditor

CITY OF BERKELEY ("BERKELEY"):

By: Tim Co
City Manager

Attest _____
City Clerk

APPROVED AS TO FORM:

[Signature]
City Attorney

ATTEST for the City of Berkeley

[Signature]
Assistant City Clerk

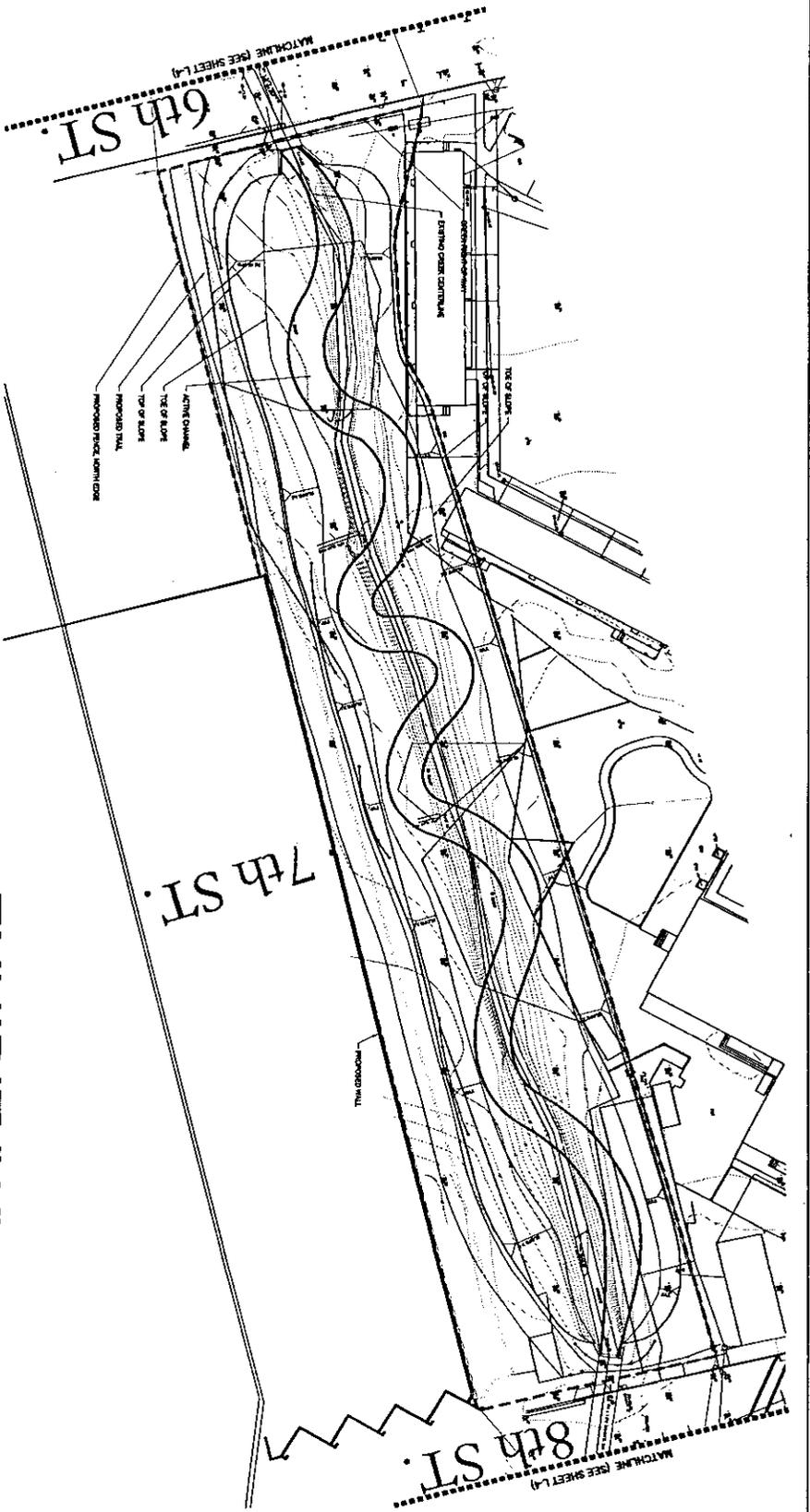


EXHIBIT "A"

License and Easement Agreement for
 Restoration and Improvement of Lower
 Codornices Creek and Associated
 Modifications to USPS Parking Lot Facilities
 Lower Codornices Creek Renovation - Phases II et seq



DATE	
BY	
CHECKED	
APPROVED	

CREEK RESTORATION & SITE IMPROVEMENT PLANS LOWER CODORNICES CREEK

CREEK
 RIGHT-OF-WAY
 PRELIMINARY PLAN

DATE	2/1/06
BY	HWL/AB
CHECKED	HWL
DATE	7/23/2006
BY	HWL
CHECKED	HWL
DATE	
BY	

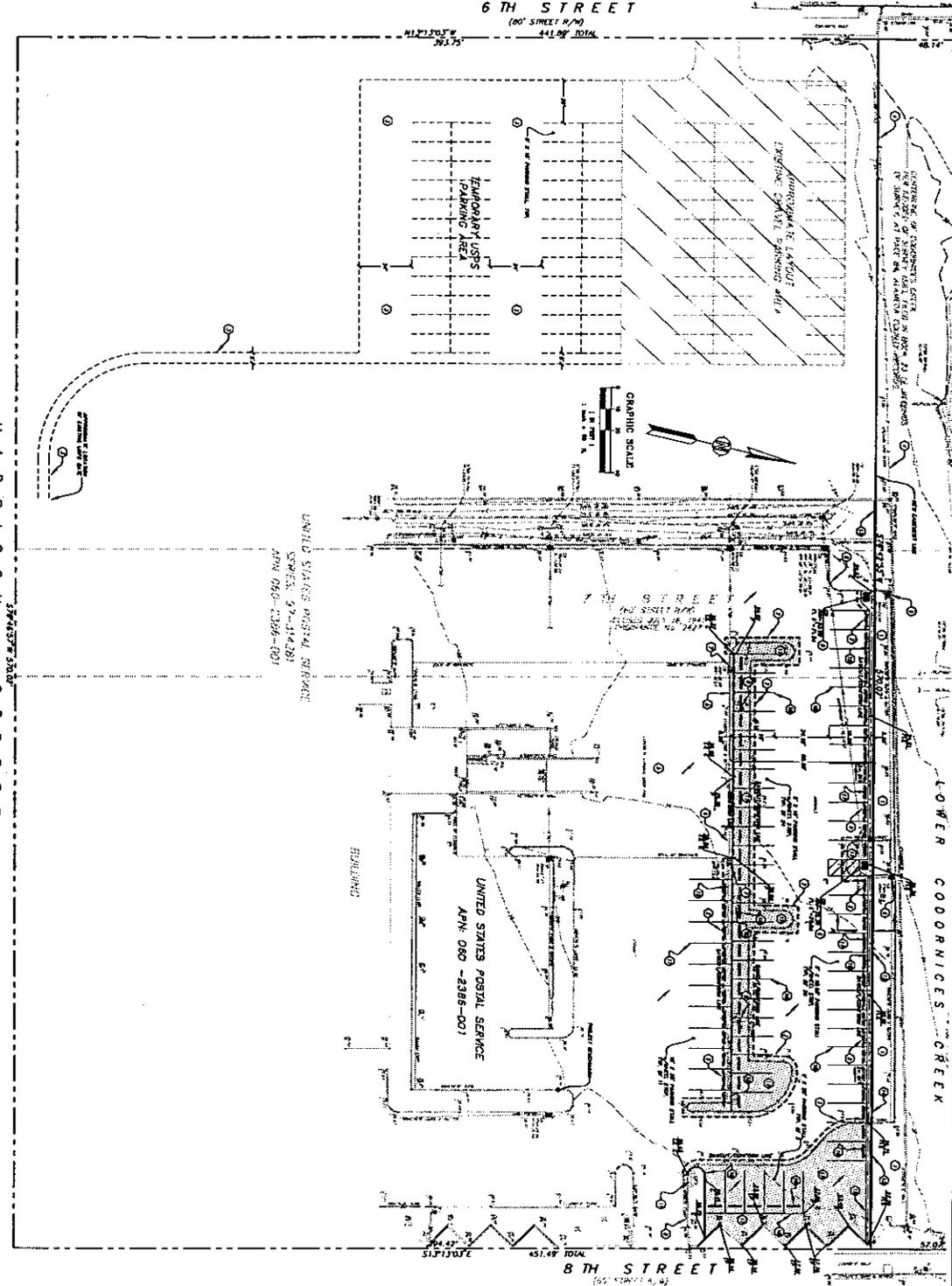
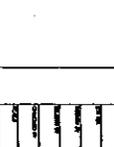
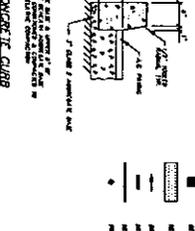
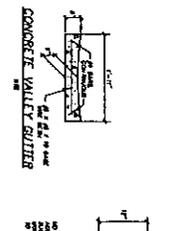
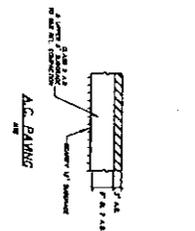
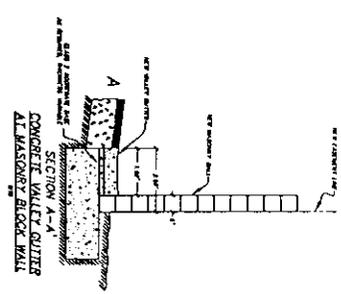
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GENERAL NOTES

1. GENERAL NOTES: GENERAL NOTES TO BE READ IN CONJUNCTION WITH THE SPECIFICATIONS AND THE CONTRACT DOCUMENTS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.
3. THE CONTRACTOR SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AND UTILITIES AT ALL TIMES.
4. THE CONTRACTOR SHALL PROTECT ALL EXISTING UTILITIES AND STRUCTURES FROM DAMAGE DURING CONSTRUCTION.
5. THE CONTRACTOR SHALL MAINTAIN ADEQUATE DRAINAGE AND EROSION CONTROL MEASURES THROUGHOUT THE PROJECT.
6. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION AND RESTORATION OF ALL VEGETATION AND SOILS.
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POST OFFICE
PARKING LOT
CIVIL SITE PLAN

100%
SUBMITTAL

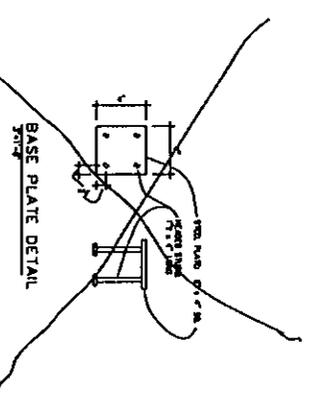
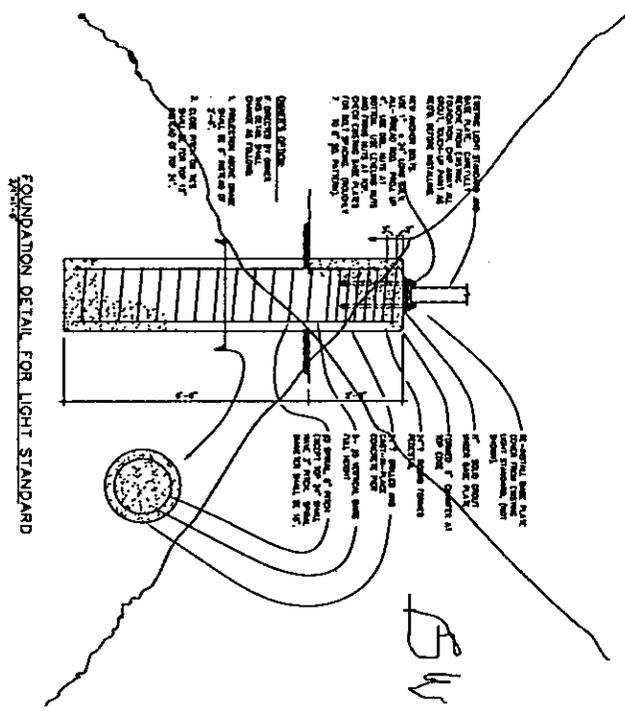
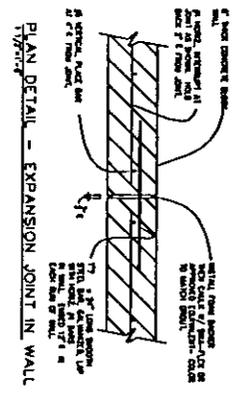
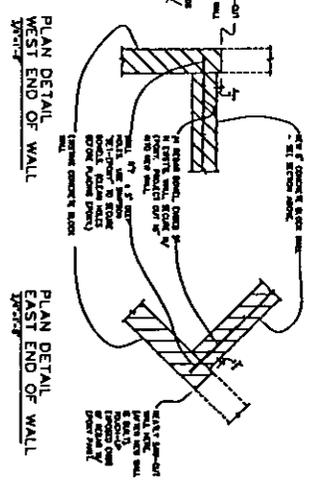
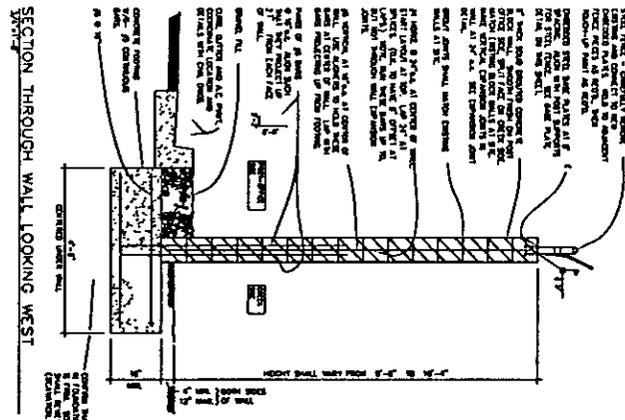
CREEK RESTORATION & SITE IMPROVEMENT PLANS
LOWER CODORNICES CREEK
PHASE II

WATERSHED
RESTORATION INSTITUTE
1000 ADDRESS ROAD, SUITE 100, COLLETON, CALIFORNIA 92522

C-5

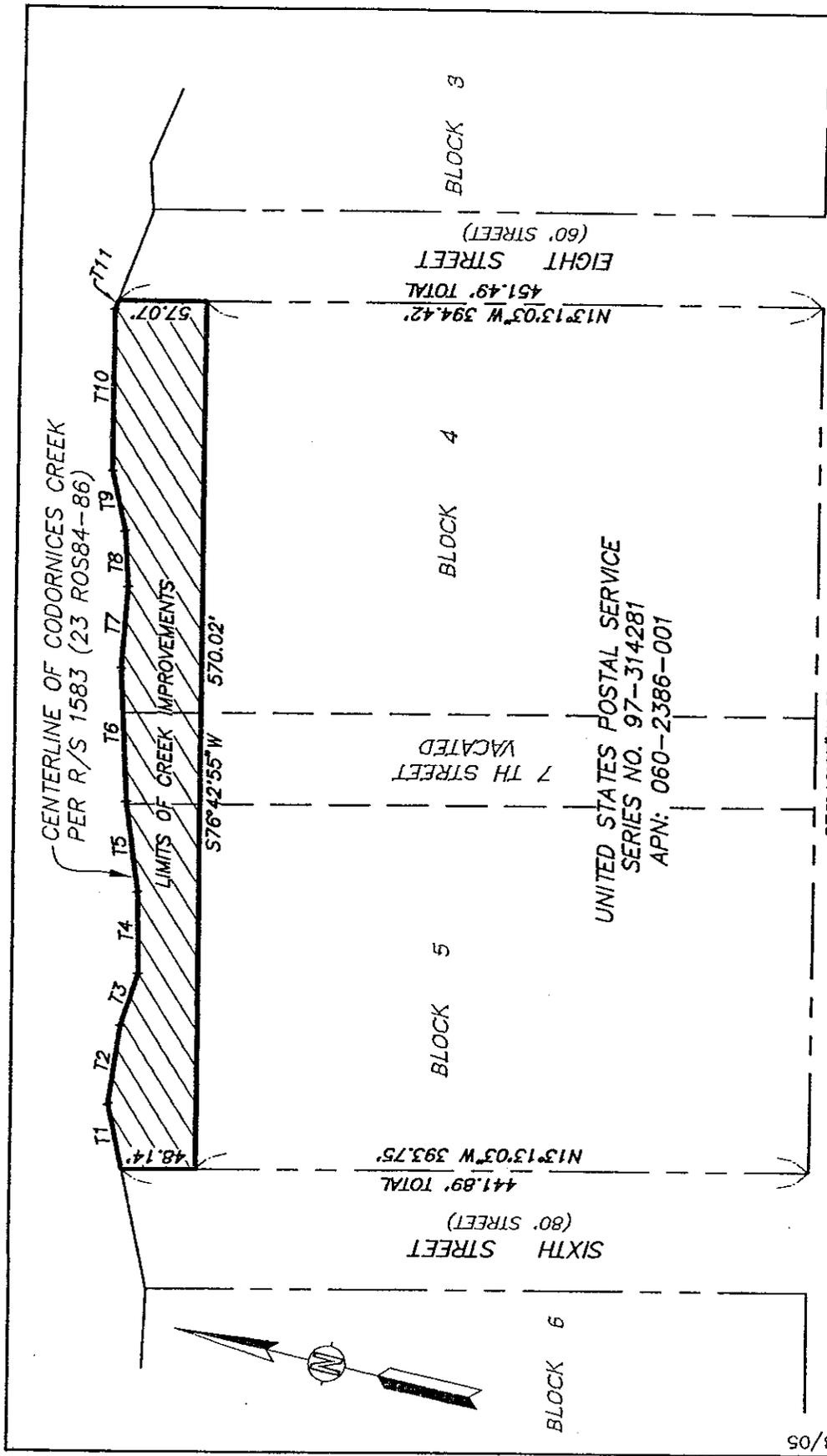
DATE: APRIL 23, 2003
DRAWN BY: [Name]
CHECKED BY: [Name]
APPROVED BY: [Name]

- NOTES:
1. TYPE AND SIZE OF WALL AND TOP OF FOUNDATION IS TO BE DETERMINED BY ARCHITECT. CONCRETE SHALL BE 3000 PSI AND REINFORCEMENT SHALL BE #4 BARS.
 2. CONCRETE SHALL BE PLACED AND FINISHED IN ACCORDANCE WITH THE FOLLOWING:
 3. THE WALL SHALL BE FINISHED TO MATCH THE ADJACENT WALL.
 4. THE WALL SHALL BE FINISHED TO MATCH THE ADJACENT WALL.
 5. THE WALL SHALL BE FINISHED TO MATCH THE ADJACENT WALL.
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 9. THE WALL SHALL BE FINISHED TO MATCH THE ADJACENT WALL.
 10. THE WALL SHALL BE FINISHED TO MATCH THE ADJACENT WALL.



CITY OF ALBANY
 Kenneth R. Hughes
 Project Engineer
 300 N. Adams Street
 Albany, NY 12202
 518.534.2800

WATERWAYS RESTORATION INSTITUTE
 1250 Addison Street #107 - Berkeley - California - 94702



TANGENT	BEARING	DISTANCE
T1	N64°51'38"E	44.10'
T2	N84°54'35"E	51.87'
T3	S85°12'20"E	35.99'
T4	N75°41'58"E	53.50'
T5	N69°06'05"E	59.97'
T6	N73°59'43"E	87.53'
T7	N80°37'21"E	36.79'
T8	N73°08'07"E	40.45'
T9	N64°36'11"E	105.52'
T10	N76°32'14"E	5.92'
T11	S82°54'37"E	5.92'

PLAT TO ACCOMPANY LEGAL DESCRIPTION
UNITED STATES POSTAL SERVICE PARCEL

KISTER, SAVIO & REI, INC
 LAND SURVEYORS - CIVIL ENGINEERS
 3095 RICHMOND PARKWAY, SUITE 214
 RICHMOND, CA. 94806
 PHONE: (510) 222-4020 FAX: (510) 222-3718
 FOR: CITY OF ALBANY
 DATE: 2/28/05 JOB No. 18340-3
 SCALE: 1" = 100' DWG No. A-6238

LEGAL DESCRIPTION

REAL PROPERTY IN THE CITY OF BERKELEY, ALAMEDA COUNTY, CALIFORNIA, BEING A PORTION OF BLOCKS 4 AND 5 AND VACATED 7TH STREET AS SHOWN ON THE MAP I. M. WENTWORTH BOOT AND SHOE CO.'S TRACT, RECORDED JUNE 17, 1878, IN BOOK 6 OF MAPS, PAGE 16, ALAMEDA COUNTY RECORDS, LYING SOUTHERLY OF THE CENTERLINE OF CODORNICES CREEK AS SHOWN ON RECORD OF SURVEY 1583, RECORDED AUGUST 5, 1999, IN BOOK 23 OF RECORDS OF SURVEY, PAGES 84 THROUGH 86, ALAMEDA COUNTY RECORDS, AND LYING NORTHERLY OF THE FOLLOWING DESCRIBED LINE:

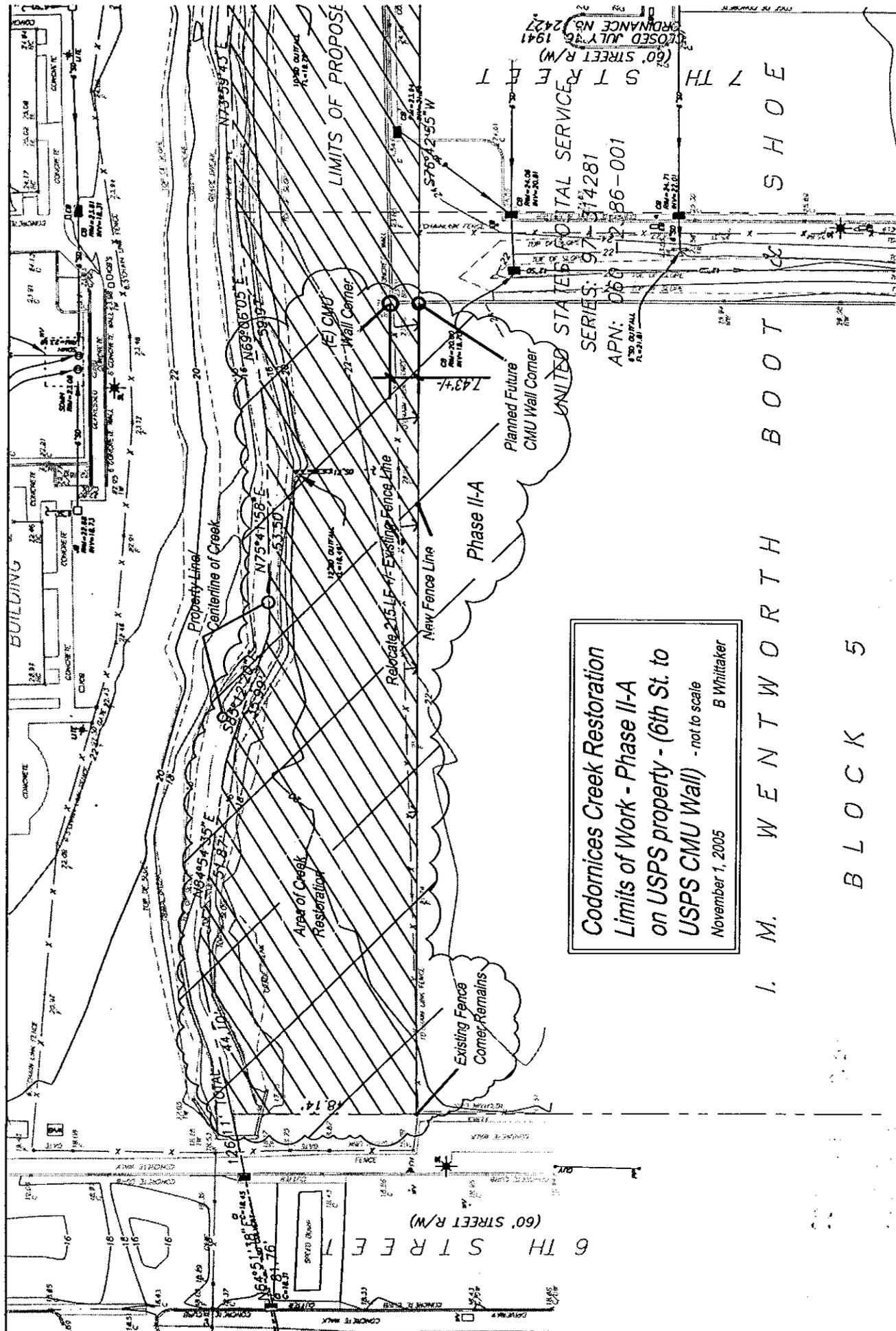
BEGINNING AT A POINT ON THE EAST LINE OF SAID BLOCK 4, DISTANT THEREON NORTH 13° 13' 03" WEST, 394.42 FEET FROM THE SOUTHEAST CORNER THEREOF; THENCE SOUTH 76° 42' 45" WEST, 570.02 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK 5, DISTANT THEREON NORTH 13° 13' 03" WEST 393.75 FEET FROM THE SOUTHWEST CORNER THEREOF.

CONTAINING AN AREA OF 28,732 SQUARE FEET MORE OR LESS.

THE ATTACHED PLAT IS MADE A PART OF THIS DESCRIPTION.

Matthew L. Rei 2/28/05
MATTHEW L. REI, DATE
L.S. NO. 7115
REGISTRATION EXPIRES: 12/31/06





Codornices Creek Restoration
Limits of Work - Phase II-A
on USPS property - (6th St. to
USPS CMU Wall) - not to scale
 November 1, 2005
 B Whittaker

I. M. WENTWORTH BOOTH

BLOCK 5

SHOE