



Public Notice

U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-R

Applicant:
Gun Creek, LLC

Published: **JANUARY 12, 2012**
Expires: **JANUARY 26, 2012**

Application No: **2006-00218**
Section: NY

All written comments should reference the above Application No. and be addressed to:
Buffalo District U.S. Army Corps of Engineers
Regulatory Branch (Attn: Molly Connerton)
1776 Niagara Street
Buffalo, New York 14207-3199

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

**Application for Permit under Authority of
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

Gun Creek, LLC, 8610 Transit Road, East Amherst, New York 14051, has requested a Department of the Army permit to permanently impact 1.48-acres of Federal wetland and 2,199 linear feet of stream in association with the construction of a residential subdivision. The proposed project is located on Whitehaven Road adjacent to Gun Creek, in the Town of Grand Island, Erie County, New York.

Project Purpose: The applicant's stated purpose of the project is to construct a residential subdivision.

Project Description: The proposed project involves the construction of a residential subdivision with approximately 175 home lots and 11 townhouse units. Approximately 1.48-acre of Federal wetland and 2,199 linear feet of stream are proposed to be permanently impacted as a result of construction.

Wetland Delineation: The wetland delineation identified 8 Federal wetlands present on-site; totaling 6.54-acres of wetland. In addition, wetland 4 (0.36 acre) was determined to be the only isolated, non-navigable, intrastate water and not subject to regulation under Section 404 of the Clean Water Act. In addition, four jurisdictional ephemeral streams totaling 2,199 linear feet were identified on the project site. The proposed project would impact the following wetlands: Wetland 3 (0.08 acre), Wetland 2 (0.44 acre) and portions of Wetland 1 (0.21 acre), Wetland 5 (0.47 acre), Wetland 7 (0.25 acre), and Wetland 9 (0.48 acre). All wetlands proposed to be impacted are comprised of successional wet meadow, excepting Wetland 9 which is comprised of shrub/forested wetland. The project as proposed will also result in permanent impacts to 2,199 linear feet of ephemeral stream.

Alternatives Analysis: The applicant has indicated that they have avoided and minimized impacts to the

waters of the United States to the maximum extent practicable. In addition to the proposed project alternative, the applicant evaluated a no-action alternative, an alternate use plan alternative, and an off-site alternative. These alternatives were discounted by the applicant for various reasons. One of the alternatives explored, and discounted, was a full build out resulting in 6.54 acres of Federal wetland impact. The current plan avoids 5.06 acres of wetlands on the site.

Proposed Mitigation: To mitigate for the permanent loss of 1.48-acres of Federal wetland and 2,199 linear feet of ephemeral stream, the applicant proposes to create 3.10-acres of shrub/emergent wetland. The proposed mitigation will be constructed on-site at the Gun Creek, LLC property.

Location and details of the above described work are shown on the attached maps and drawings.

Comments or questions pertaining to the work described in this notice should reference the Application Number and be directed to the attention of Molly Connerton, who can be contacted at the above address, by calling (716) 879-4304, or by e-mail at: molly.a.connerton@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The applicant has certified that the proposed activity complies with New York's approved Coastal Zone Management Program and will be conducted in a manner consistent with that program. General Concurrence was issued by the New York State Department of State for this work on March 27, 2006 (DOS reference number F-2005-1059). Any comments on the consistency of the proposed activity with New York State's Coastal Zone Management Program should be forwarded to:

New York Department of State
Division of Coastal Resources
Coastal Management Program
One Commerce Plaza
99 Washington Avenue
Albany, NY 12231
Attn: Consistency Review
Telephone (518) 486-3200

The following authorization(s) may be required for this project:

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

There are no registered historic properties or properties listed as being eligible for inclusion in the National Register of Historic Places that will be affected by this project.

Available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species. There are no species listed as protected pursuant to the Endangered Species Act located within Erie County, New York, and therefore the Corps is not consulting beyond this Public Notice with the U.S. Fish and Wildlife Service.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SIGNED

Diane C. Kozlowski
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for **15** days from the date of issuance.



W12G93b

Gun Creek

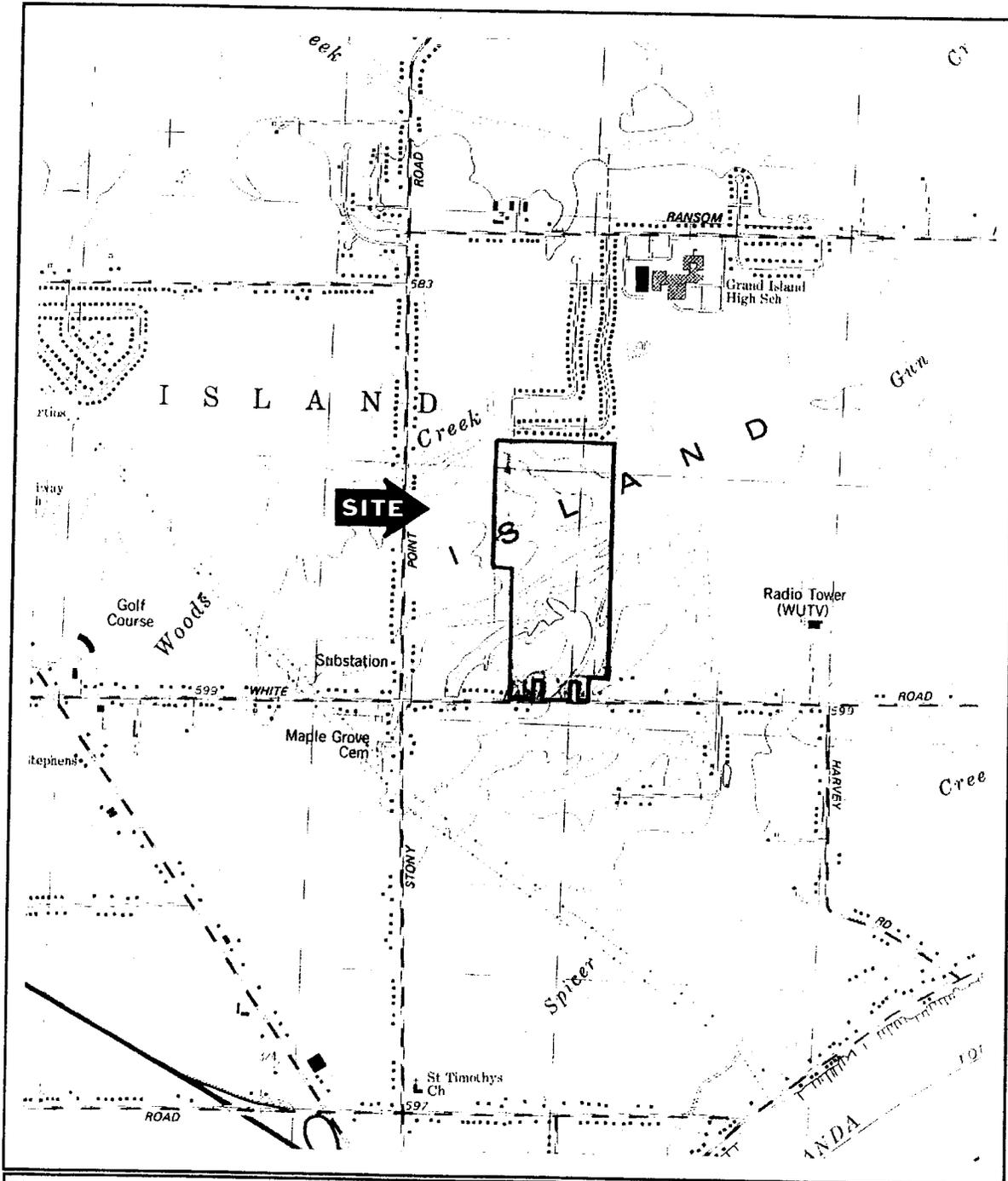
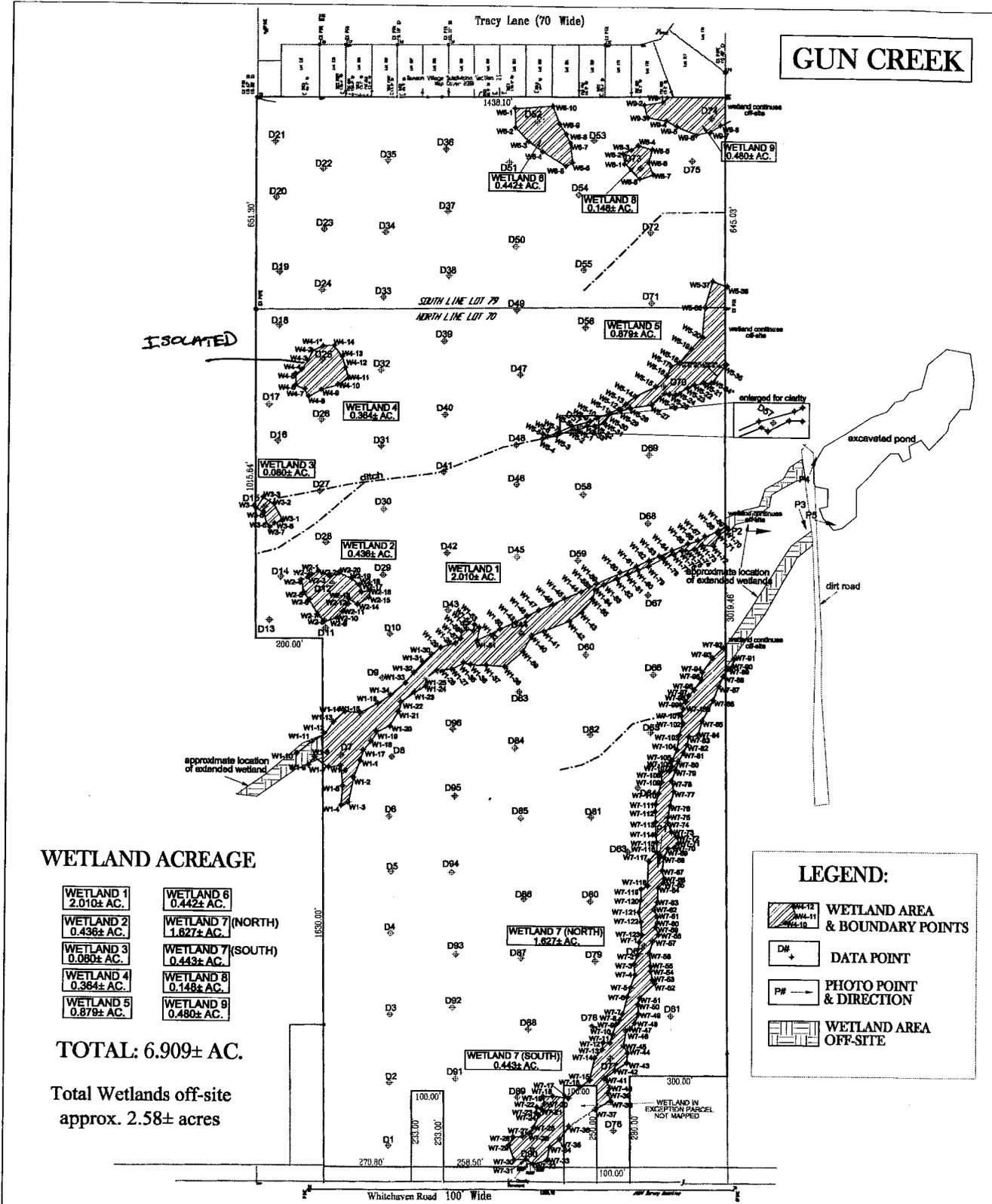


Figure 1 USGS 7.5 Minute
Topographical Map
Tonawanda West
Quadrangle 1980

Gun Creek
Town of Grand Island
Erie County, New York



GUN CREEK



WETLAND ACREAGE

WETLAND 1 2.010± AC.	WETLAND 6 0.442± AC.
WETLAND 2 0.436± AC.	WETLAND 7 (NORTH) 1.827± AC.
WETLAND 3 0.080± AC.	WETLAND 7 (SOUTH) 0.443± AC.
WETLAND 4 0.364± AC.	WETLAND 8 0.148± AC.
WETLAND 5 0.879± AC.	WETLAND 9 0.480± AC.

TOTAL: 6.909± AC.

Total Wetlands off-site
approx. 2.58± acres

LEGEND:

- WETLAND AREA & BOUNDARY POINTS
- DATA POINT
- PHOTO POINT & DIRECTION
- WETLAND AREA OFF-SITE

Total Site Area:
98.543± Acres



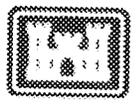
TRUE NORTH AT
79° 35' OF WEST LONGITUDE

EDI PROJECT CODE: W12G93b
Map Date: 12/10/04, MSD for EDI
Revised: 2/08/06, WTM for EDI
Baseline Map Provided by:
Niagara Boundary & Mapping
Scale: NOT TO SC
File Name: Gun Crk_WI

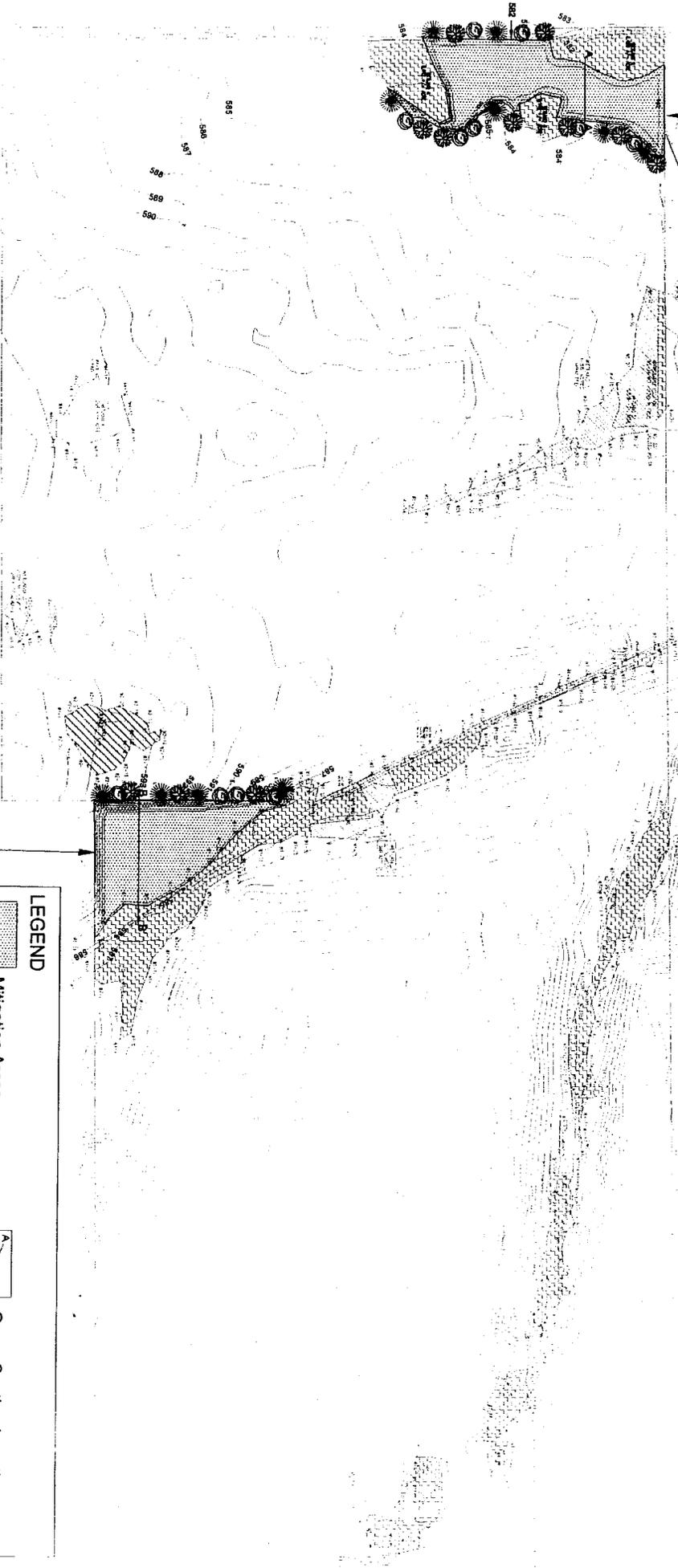
Attachment G: Wetland Delineation Map GUN CREEK

TOWN OF GRAND ISLAND ERIE COUNTY, NEW YORK

Gun Creek, LLC
D/A Processing No. 2006-00218
Erie County, New York
Quad: Tonawanda West
Sheet 2 of 8



Mitigation Area 1 = 1.65± acre
 Mitigation Area Bottom Elevation = 582'
 Side Slopes minimum 4:1 ratio



Mitigation Area 2 = 1.45± acre
 Mitigation Area Bottom Elevation = 585.5'
 Side Slopes minimum 4:1 ratio

ERIE PROJECT CODE: W120206
 Base Map Provided by
 Niagara Civil Engineering &
 Mapping Services
 Map Date: 03/12/07, JMC for ERIE
 Revised:
Scale: Not To Scale

Gun Creek Mitigation
 Attachment C: Mitigation Plan Drawings (Detail)
 TOWN OF GRAND ISLAND
 ERIE COUNTY, NEW YORK

3H DIMENSIONS, INC.
 104 and 104a Niagara Falls, New York
 1430 Tonawanda Avenue
 Tonawanda, NY 14150
 (716) 855-1711 • Fax: (716) 855-5810



LEGEND

	Mitigation Areas		Cross Section Location
	Wetlands Areas to Remain		Tree/Shrub Plantings
	Existing Topography		Wetland Impact Areas
	Proposed Topography		

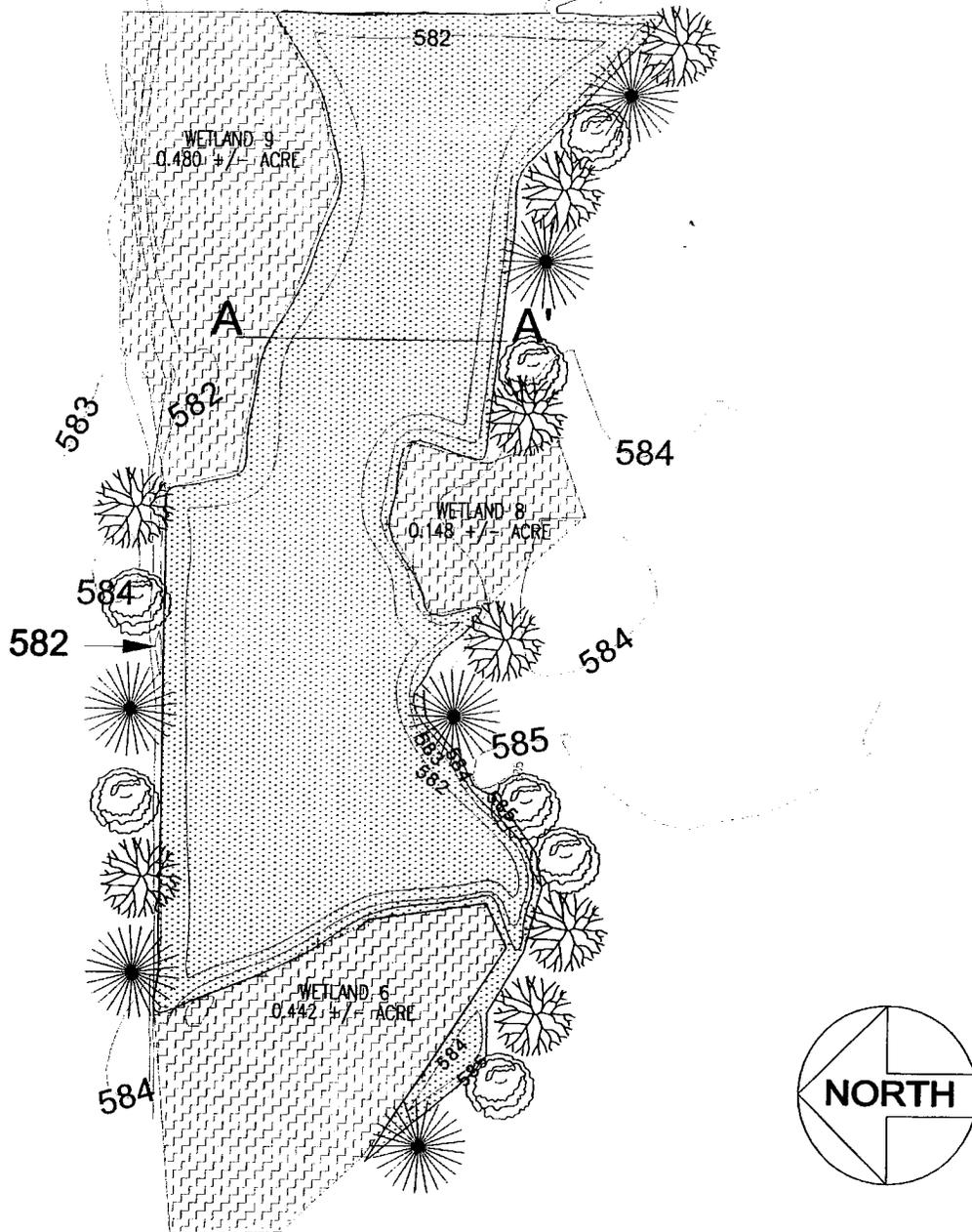
Gun Creek, LLC
 D/A Processing No.2006-00218
 Erie County, New York
 Quad: Tonawanda West
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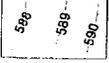
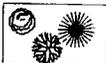
Mitigation Area 1 = 1.65± acre

Mitigation Area Bottom Elevation= 582'

Side Slopes minimum 4:1 ratio



LEGEND

-  Mitigation Areas
-  Wetlands Areas to Remain
-  Existing Topography
-  Cross Section Location
-  Tree/Shrub Plantings
-  Proposed Topography

EDI PROJECT CODE: W12G93c
<i>Base Map Provided by Metzger Civil Engineering & Niagara Boundary & Mapping Services</i>
Map Date: 03/06/07, JMC for EDI Revised:
Scale: Not To Scale
File Name: Gun Creek Cross Section A-A'.dc

Gun Creek Mitigation

Attachment C: Mitigation Pla

TOWN OF GRAND ISLAND



H DIMENSIONS

Soil and Hydrogeologic Investigation
1091 Jamison Road • Elma, NY 11731
(716) 655-1717 • Fax (716) 655-2915

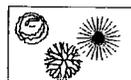
Gun Creek, LLC
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Erie County, New York
Quad: Tonawanda West
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LEGEND



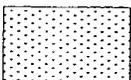
Cross Section Location



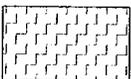
Tree/Shrub Plantings



Proposed Topography



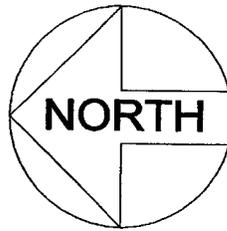
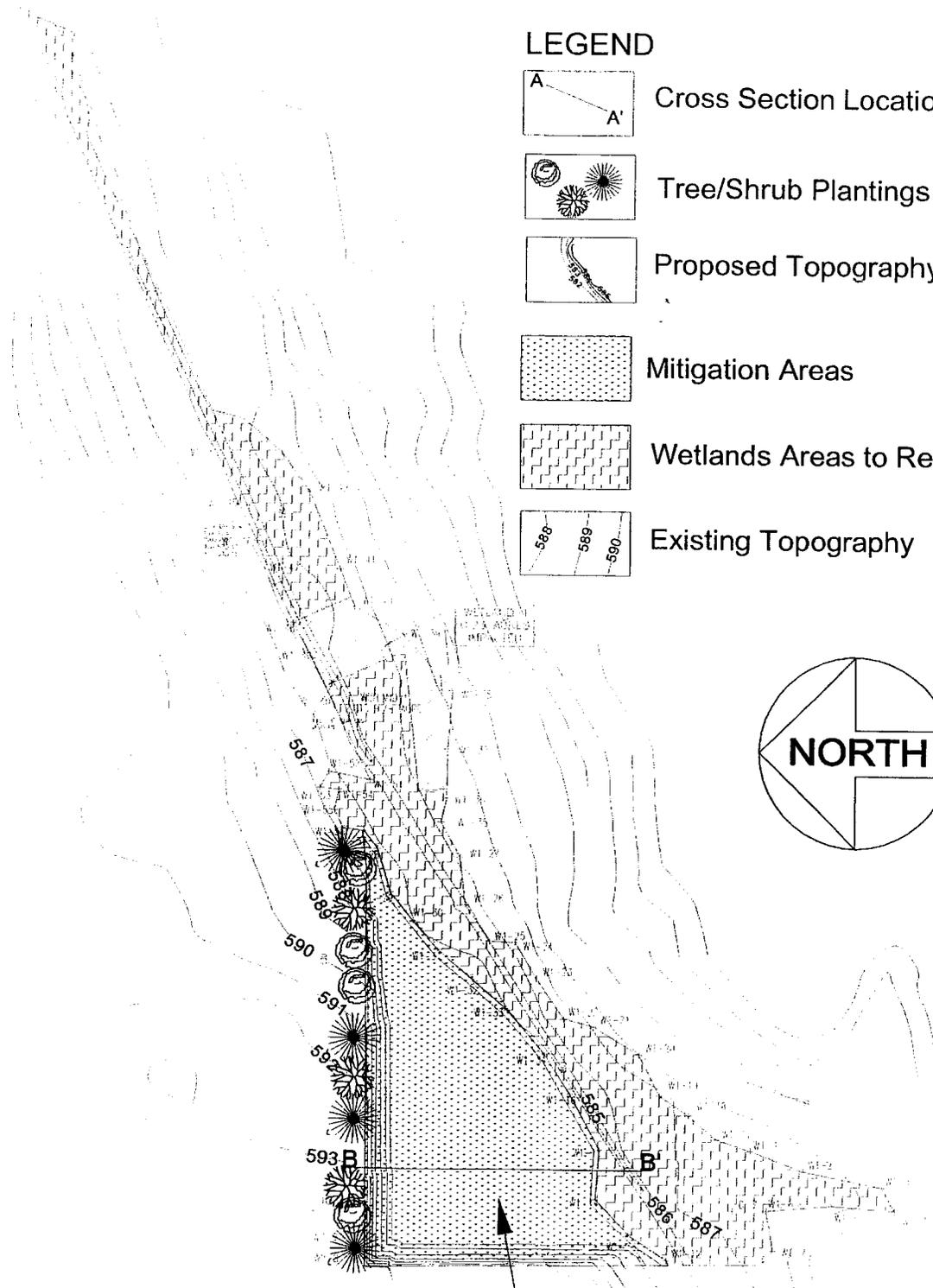
Mitigation Areas



Wetlands Areas to Remain

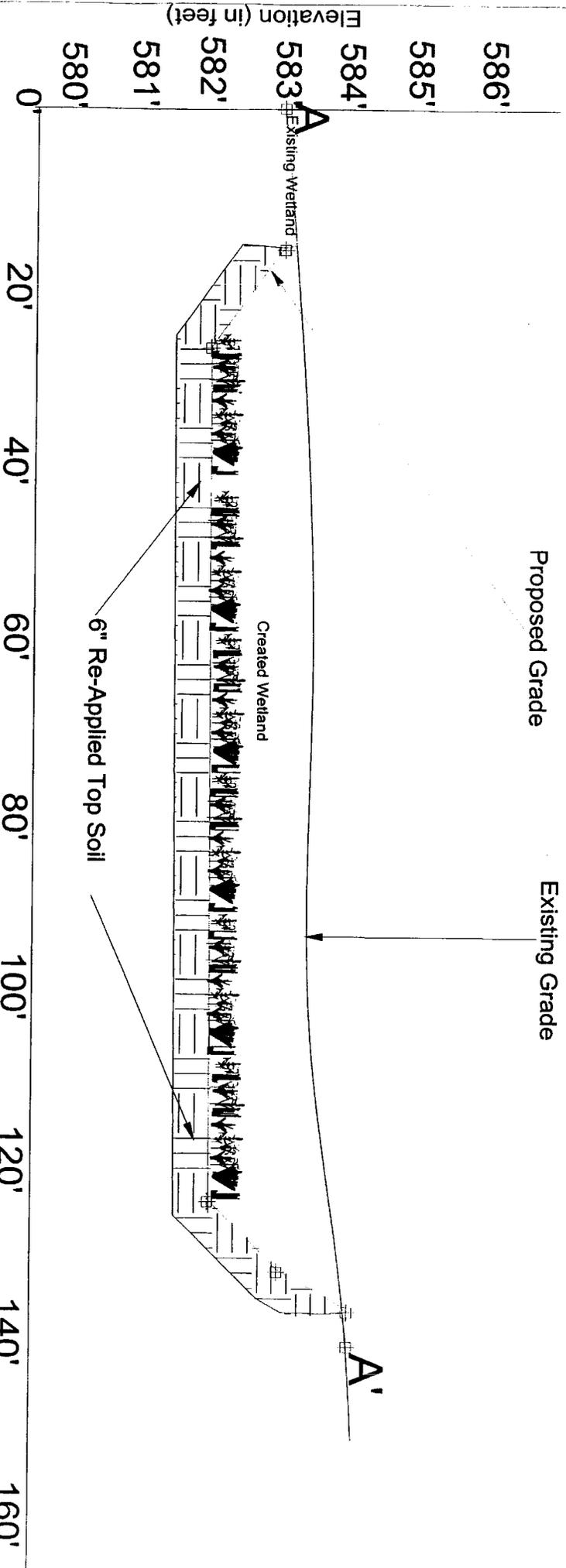


Existing Topography



Mitigation Area 2 = 1.45± acre
 Mitigation Area Bottom Elevation = 586.5'
 Side Slopes minimum 4:1 ratio

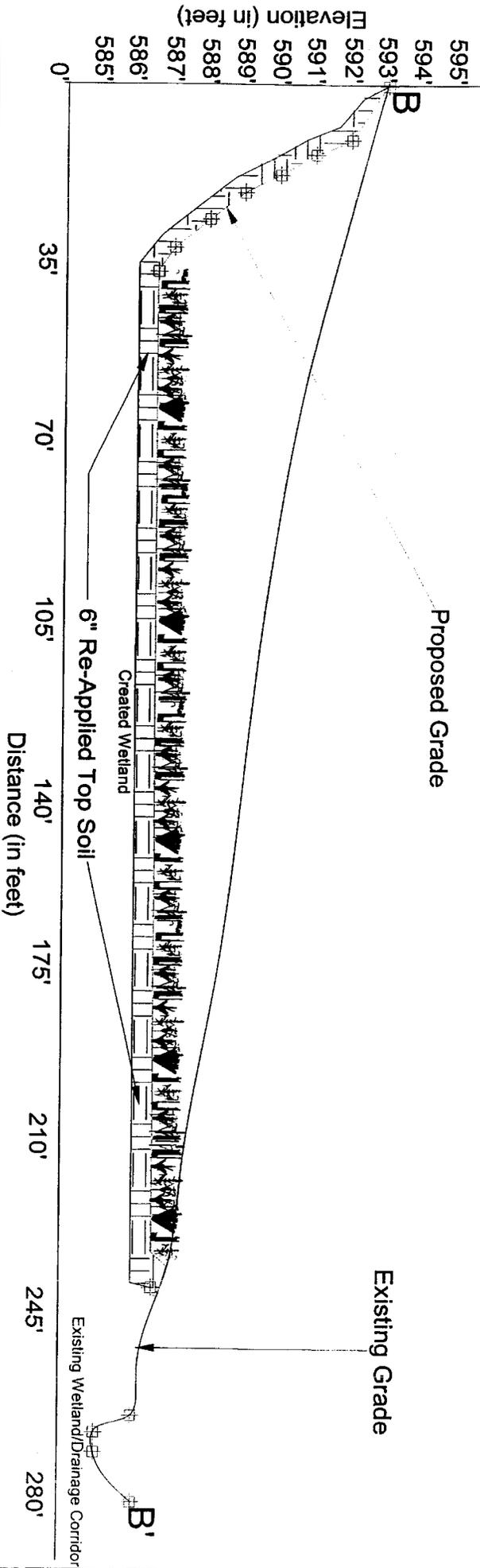
<p>EDI PROJECT CODE: W12G93c</p>	<p>Gun Creek Mitigation</p>	
<p>Base Map Provided by <i>Metzger Civil Engineering & Niagara Boundary & Mapping Services</i></p>	<p>Attachment C: Mi TOWN OF GRAND ISLAND</p>	
<p>Map Date: 03/06/07, JMC for EDI Revised:</p>		<p>Gun Creek, LLC D/A Processing No. 2006-00218 Erie County, New York Quad: Tonawanda West Sheet 6 of 8</p>
<p>Scale: Not To Scale</p>	<p><i>Soil and Hydrog</i> 1091 Jamison Road • Elma, NY 14059 (716) 655-1717 • Fax (716) 655-2915</p>	
<p>File Name: Gun Creek Cross Section A-A'.dc</p>		



EDI PROJECT CODE: W12G93c Base Map Provided by Metzger Civil Engineering & Niagara Boundary & Mapping Services	Gun Creek Mitigation Mitigation Area 1, Attachment D: Cross Section Drawing A-A' TOWN OF GRAND ISLAND ERIE COUNTY, NEW YORK
Map Date: 01/24/07, JMC for EDI Revised:	 JH DIMENSIONS, INC. <small>Soil and Hydrogeologic Investigations * Wetland Delineations 1091 Jamison Road • Ellettsville, NY 14859 (716) 555-1117 • Fax (716) 555-2919</small>
Scale: Not To Scale	
File Name: Gun Creek Cross Section A-A'.drc	

Gun Creek, LLC
 D/A Processing No. 2006-00218
 Erie County, New York
 Quad: Tonawanda West
 Sheet 7 of 8





EDJ PROJECT CODE: W12093c	
<i>Base Map Provided by Mezger Civil Engineering & Mitigation Boundary & Mapping Services</i>	
Map Date: 03/06/07, JMC for EDJ Revised:	
Scale: Not To Scale	
File Name: Gun Creek Cross Section A.A.dic	
Gun Creek Mitigation	
Mitigation Area 2, Attachment D: Cross Section Drawing B-B'	
TOWN OF GRAND ISLAND ERIE COUNTY, NEW YORK	
JH DIMENSIONS, INC.	
 <i>Soil and Hydrogeologic Investigations • Wetland Delineations</i> 1091 Lamborn Road • Roma, NY 14059 (716) 855-1217 • Fax (716) 855-2835	

Gun Creek, LLC
 D/A Processing No. 2006-00218
 Erie County, New York
 Quad: Tonawanda West
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