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**TO:** Electoral Area Services Committee      **DATE:** July 9, 2019

**FROM:** Sarah Martin  
Planning Technician      **FILE:** PL2018-207

**SUBJECT:** **Development Permit with Variance Application No. PL2018-207 -  
Lot 2, Island Highway West, Electoral Area H  
Lot 2, District Lot 33, Newcastle District, Plan EPP10603**

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## **RECOMMENDATIONS**

1. That the Board approve Development Permit with Variance No. PL2018-207 to permit the development of a dwelling unit, accessory buildings and structures, driveway, stream crossings, yard area, and onsite servicing subject to the terms and conditions outlined in Attachment 2, Schedules 1 to 3.
2. That the Board direct staff to complete the required notification for Development Permit with Variance No. PL2018-207.

## **SUMMARY**

The applicant proposes to develop a dwelling unit, associated servicing, yard area, driveway, and stream crossings within the subject property. The applicant proposes to vary the watercourse setbacks and the lot line setback for a bridge in order to access the subject property. The property is significantly constrained by watercourses and the buildable area can not be accessed without stream crossings. As the applicant has provided sufficient rationale and the variance will not result in negative functional or environmental impacts, the applicant has made reasonable efforts to address Policy B1.5 guidelines. Given that the development permit area guidelines have been met and no negative impacts are anticipated as a result of the proposed development, it is recommended that the development permit with variance be approved subject to the conditions outlined in Schedules 1 to 2 of the draft development permit included as Attachment 2.

## **BACKGROUND**

The Regional District of Nanaimo (RDN) has received an application from Donald Smith on behalf of Claire Lightfoot to permit the development of a dwelling unit, associated servicing, yard area, driveway, and stream crossings. The subject property is approximately 2.01 hectares in area and is zoned Agriculture (AG1), Subdivision District 'D', pursuant to "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987". The property is located on the west side of Island Highway West within the Agricultural Land Reserve (see Attachment 1 – Subject Property Map).

The property is currently undeveloped and is significantly constrained by a wetland and Ridgewil Creek. An elevated area to the middle and rear of the property represents the buildable area on

the subject property. The dwelling unit is proposed to be serviced by community water and on-site sewage disposal.

The proposed development is subject to the Freshwater and Fish Habitat Protection Development Permit Area (DPA) per the “Regional District of Nanaimo Electoral Area ‘H’ Official Community Plan Bylaw No. 1335, 2017”.

### ***Proposed Development and Variances***

The applicant proposes to develop a driveway with three stream crossings, develop a building site, install hydro and community water along the driveway, construct a dwelling unit, and yard area. This proposal involves the disturbance of soil, removal, alteration, disruption and destruction of vegetation, construction of buildings and structures, and the construction of bridges within the DPA. Therefore, a development permit is required.

A bridge is necessary to cross Ridgewil Creek, which runs parallel to the road frontage. The property can not be accessed without a bridge. As the proposed bridge is considered to be a structure that must meet minimum setback requirements, the applicant proposes to vary the following regulations from the “Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987”:

1. **Section 3.3.8 Setbacks – Watercourses, excluding the Sea** to reduce the minimum setback from 15.0 metres from the natural boundary or 18.0 metres from the stream centerline, whichever is greater, to 0.0 metres from the natural boundary or stream centerline, whichever is greater, for a bridge across Ridgewil Creek as shown in Attachment 2, in order to access the subject property.
2. **Section 3.4.1.3.1 Minimum Setback Requirements – All non-farm buildings and structures** to reduce the minimum setback from a lot line from 8.0 metres to 5.4 metres for a bridge across Ridgewil Creek as shown in Attachment 2, Schedule 2.

A variance is not required for the wetland crossings, as these are proposed to be culverts that do not meet the definition of a structure under the zoning bylaw. Bank heights range from 0.15 to 0.6 metres below the adjacent level ground surfaces. It should be noted that the work to install these crossings does not require a development permit per DPA exemption 9. The in-stream works have been approved as defined by Section 11 of the *Water Sustainability Act* (Change Approval and Notification).

### ***Land Use Implications***

The applicant has provided: a site survey prepared by Oceanside Geomatics Land Surveying Ltd dated June 12, 2019; a bridge design detail prepared by Herold Engineering dated March 1, 2019; a culvert cross section prepared by Donald Smith received March 7, 2019; a Hydrologic Assessment prepared by Integrated Watersheds dated April 11, 2019; an access permit for a residential driveway issued by the Ministry of Transportation and Infrastructure (MOTI) dated November 20, 2018; and, a Riparian Area Assessment and cover letter prepared by EDI Environmental Dynamics Inc (EDI) dated January 2, 2019.

The buildable area within the subject property is significantly constrained and cannot be accessed without crossing the water features that characterize the site. The proposed siting of the driveway, crossings, and servicing corridor is per the recommendations of EDI. As recommended, the servicing corridor for community water and hydro, is proposed to be closely aligned with the

driveway, which is proposed along the path with the least impact to the environmentally sensitive wetland and creek. The proposed bridge design and location has been approved by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), as well as MOTI through their respective approval and permitting processes. The applicant notes that the bridge location is not readily visible from the highway or to neighbours.

The bridge design and proposed culverts will accommodate a 1:200 year flood interval as recommended by EDI and confirmed by Integrated Watersheds. The assessment concludes that Ridgewil Creek functions as a low gradient channel that effectively drains surface water from the area during low-to-moderate events, and that the channel characteristics allow for increased storage volume during elevated discharge events. The upstream drainage characteristics and limitations of an existing culvert under Island Highway West to the north of the subject property causes Ridgewil Creek and its tributaries to back up during moderate-to-high flow periods. However, as the proposed bridge is higher than the elevation of the highway, the bridge is considered to be adequate to accommodate a 1:200 year flood interval and can be installed as planned.

The submitted survey indicates that the proposed dwelling unit location meets the 8.0 metre lot line setback for all non-farm buildings and structures, as well as the 15.0 metre setback from the natural boundary of a watercourse per the Zoning Bylaw and the Floodplain Bylaw. Spot elevations indicate that the dwelling unit will need to be elevated by approximately 2.2 metres to meet the Floodplain Bylaws 1.5 metre flood construction level for un-named and un-mapped watercourses.

Given the significant site constraints and the recommendations of the Hydrologic and Riparian Area Assessments, the applicant has provided sufficient rationale in support of the proposed variance. Further, the proposed variance will not result in negative view implications for adjacent properties. Therefore the applicants have made reasonable efforts to address Policy B1.5 guidelines.

### ***Environmental Implications***

In order to satisfy the DPA guidelines, a Riparian Area Assessment (assessment) and cover letter prepared by EDI and a Hydrologic Assessment prepared by Integrated Watersheds, have been submitted in support of the development permit application. The DPA guidelines require that an assessment prepared by a Qualified Environmental Professional be submitted in support of a development permit application (guideline 13). The guidelines also require that development not increase flood risk on the subject property nor on adjacent or nearby properties (guideline 10). The above submission materials address these guidelines.

Water features on and abutting the subject property are associated with Ridgewil Creek, which flows into Nash Creek, a direct tributary to the Sea. Nash Creek is reported to be utilized by anadromous fish such as sea-run cutthroat trout and chum salmon. Juvenile salmonids were observed throughout both streams during the July 2018 EDI site visit.

In order to access the buildable area within the subject property, several crossings of the water features are required. The applicant has worked closely with EDI to determine the best location, treatment, and timing for the driveway crossings and a servicing corridor (community water line and hydro). The proposal also makes use of previously disturbed areas to minimize impacts to functioning riparian vegetation. The assessment provides guidance with the development of this corridor, such as handling fill, maximum corridor width, timing, and sediment and erosion control measures. While the biologist has recommended that the hydro poles be located at specific

locations along the driveway, the ultimate design is dependent on the outcome of BC Hydro's electrical service design process. A detailed design can not be prepared by the applicant's electrical contractor until brush clearing is completed in support of this process. Brush clearing constitutes the disturbance and removal of vegetation.

The proposed dwelling unit location is preliminary and as such, the assessment recommends a 5.0 metre root zone protection area outside of the Streamside Protection and Enhancement Area (SPEA) to ensure that the dwelling is sited appropriately to protect the SPEA. The Province advises that the assessment report is adequate for vegetation disturbance and removal only, and should be updated with the final dwelling unit location. It is not recommended that an additional development permit be required. As the applicant proposes to develop a dwelling unit and associated yard area outside the 5.0 metre root protection zone, it is recommended that these activities be approved in accordance with the conditions of approval outlined in Attachment 2.

The assessment recommends that stream crossing structures and adjacent roadway approaches be designed to accommodate significant flooding, to prevent flooding within and upstream of the subject property. Therefore it is recommended that the applicant be required to develop the bridge in accordance with the submitted engineered bridge designs and the professional recommendations of the Hydrologic Assessment.

The assessment concludes that the fragmentation of sensitive riparian and aquatic habitats will be minimal. It recommends timing for vegetation removal and pruning, as well as for instream works. These time windows are sensitive to fish rearing and bird nesting seasons.

Given that the DPA guidelines have been met, it is anticipated that the proposed development will not result in negative impacts to the assessment area. It is recommended that the development permit application be approved subject to the terms and conditions outlined in Schedules 1 to 3 of the draft development permit included as Attachment 2.

### ***Intergovernmental Implications***

The application was referred to FLNR, MOTI, and Emergency Services. FLNR advised that a Notification submitted under the *Water Sustainability Act* was required for the stream crossings and the installation of hydro poles. The applicant has met this requirement, as discussed in this staff report. Per the Province's conditions of approval, stream crossings may be constructed during the no fish window, which is June 15 through September 15, 2019 and must adhere to the Environmental Protection Plan for in-stream works prepared by EDI dated April 20, 2019. An Environmental Monitor must be onsite during the work and have a shutdown procedure in place in case of increased flow or heavy rains.

The location of the proposed driveway access and the proposed variance to the lot line setback for the bridge have been reviewed and approved by MOTI through the driveway access permit application process. MOTI has a legislated setback of 4.5 metres from the travelled lane or fog line of a highway. The proposed bridge is located 5.7 metres from the front lot line, which is approximately 6.4 metres from the edge of the asphalt. The proposed bridge location exceeds this setback and MOTI expressed that it had no concerns with the location of the bridge and driveway.

Emergency Services commented that due to the distance of the dwelling unit from the closest hydrant, firefighting will require an area along the driveway for a relay pump and the ability for a truck to turn around at the end of the driveway. These comments have been passed on to the applicant.

### ***Public Consultation Implications***

Pending the Electoral Area Services Committee's recommendation and pursuant to the *Local Government Act* and the "Regional District of Nanaimo Development Application and Notification Procedures Bylaw No. 1776, 2018", property owners and tenants of parcels located within a 50.0 metre radius of the subject property will receive a direct notice of the proposal and will have an opportunity to comment on the proposed variance prior to the Board's consideration of the application.

### **ALTERNATIVES**

1. To approve Development Permit No. PL2018-207 subject to the conditions included in Schedules 1 to 3 of Attachment 2.
2. To deny Development Permit No. PL2018-207.

### **FINANCIAL IMPLICATIONS**

The proposed development has no implications related to the Board 2018 – 2022 Financial Plan.

### **STRATEGIC PLAN IMPLICATIONS**

The proposed development has been reviewed and has no implications for the 2019 – 2022 Board Strategic Plan.



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Sarah Martin  
smartin@rdn.bc.ca  
June 17, 2019

Reviewed by:

- P. Thompson, Manager, Current Planning
- G. Garbutt, General Manager, Strategic & Community Development
- P. Carlyle, Chief Administrative Officer

Attachments

1. Subject Property Map
2. Draft Development Permit PL2018-207

1

D.D.90199-N  
Am. 9  
D.D.90198-N  
Am. 8

TARBELL ROAD  
EPP39933

7  
5  
3  
1  
A  
1  
A  
1  
A  
1  
A  
1  
A  
A  
E.P.T.LOT 1 PL.2459  
VIP79715

PL.1130-R.  
EPP13419  
B  
2  
PL.3530  
PL. 10877  
A  
C  
EASEMENT EPP13420  
1  
PL. 6269.  
2  
EPP10603  
A  
VIP87691  
EPP10297  
EASEMENT  
PCL."A"  
D.D.54075-N.  
SUNNYBEACH ROAD  
D.L.33  
REM. 1  
REM.2  
PL. 43098  
R.1  
PL.31250  
R.2  
ISLAND HIGHWAY WEST  
PL.59776  
VIP72052  
A  
VIP73539  
B  
C  
EASEMENT EPP13801  
2  
EPP13127  
1  
B  
PLAN 3455  
SEABOARD ROAD  
EASEMENT EPP13128  
PL.18192  
1  
PLAN 729-R.  
AMD.LOT 8, PLAN 2459


**SUBJECT PROPERTY**  
Lot 2, District Lot 33,  
Newcastle District, Plan EPP10603

ESQUIMALT AND NANAIMO RAILWAY RIGHT OF WAY  
(DEDICATED ONLY) ROAD

0 50 100 150  
Meters

N

**Attachment 2  
Draft Development Permit**

 <b>REGIONAL DISTRICT OF NANAIMO</b>	<b>STRATEGIC &amp; COMMUNITY DEVELOPMENT</b>  <b>6300 Hammond Bay Road, Nanaimo, BC V9T 6N2</b> <b>250-390-6510 or 1-877-607-4111</b> <b><a href="http://www.rdn.bc.ca">www.rdn.bc.ca</a></b>  <b>DEVELOPMENT PERMIT NO. PL2018-207</b>
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**To:** ("Permittee") Claire Susan Lightfoot

**Mailing Address:** c/o Donald Smith, 616 Avalon Road, Victoria, BC V8V 1N7

1. Except as varied or supplemented by this permit, the development permit is issued subject to compliance with all applicable bylaws and provincial and federal statutes and regulations.
2. This development permit applies only to those lands within the Regional District of Nanaimo described below, and all buildings, structures and other development thereon:

**Legal Description:** Lot 2, District Lot 33, Newcastle District, Plan EPP10603 ("the Lands")

**Civic Address:** Lot 2, Island Highway West **P.I.D.:** 028-930-932

3. The Lands shall be developed strictly in accordance with the terms and conditions of this permit.
4. The Permittee as a condition of issuance of this permit agrees to comply with the conditions of Schedule 1, which is attached to and forms part of this permit.
5. The Permittee as a condition of issuance of this permit agrees to develop the Lands, in substantial compliance with the plans and specifications included in Schedules 2, and 3, which are attached to and form part of this permit.
6. With respect to the Lands, "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" is varied as outlined in Schedules 1 to 3 which are attached to and form part of this permit.
7. Subject to the terms of the permit, if the holder of the permit does not substantially start construction with respect to which the permit was issued within two years after the date it is issued, the permit shall lapse in accordance with Section 504 of the *Local Government Act*.
8. This permit prevails over the provisions of the bylaw in the event of conflict.
9. Notice of this permit shall be filed in the Land Title Office at Victoria under Section 503 of the *Local Government Act*, and upon such filing, the terms of this permit or any amendment hereto shall be binding upon all persons who acquire an interest in the Lands affected by this permit.
10. This permit is not a building permit.

Authorizing Resolution to issue passed by the Board this XX<sup>th</sup> day of Month, 2019.

## **Schedule 1 Conditions of Permit**

The following sets out the terms and conditions of Development Permit with Variance No. PL2018-207:

### Bylaw No. 500, 1987 Variances

With respect to the lands, "Regional District of Nanaimo Land Use and Subdivision Bylaw No. 500, 1987" is varied as follows:

1. **Section 3.3.8 Setbacks – Watercourses, excluding the Sea** to reduce the minimum setback from 15.0 metres from the natural boundary or 18.0 metres from the stream centerline, whichever is greater, to 0.0 metres for a bridge across Ridgewil Creek as shown in Attachment 2, Schedule 2 and Schedule 3, in order to access the subject property.
2. **Section 3.4.1.3.1 Minimum Setback Requirements – All non-farm buildings and structures** to reduce the minimum setback from a lot line from 8.0 metres to 5.4 metres, for a bridge across Ridgewil Creek as shown in Attachment 2, Schedule 2.

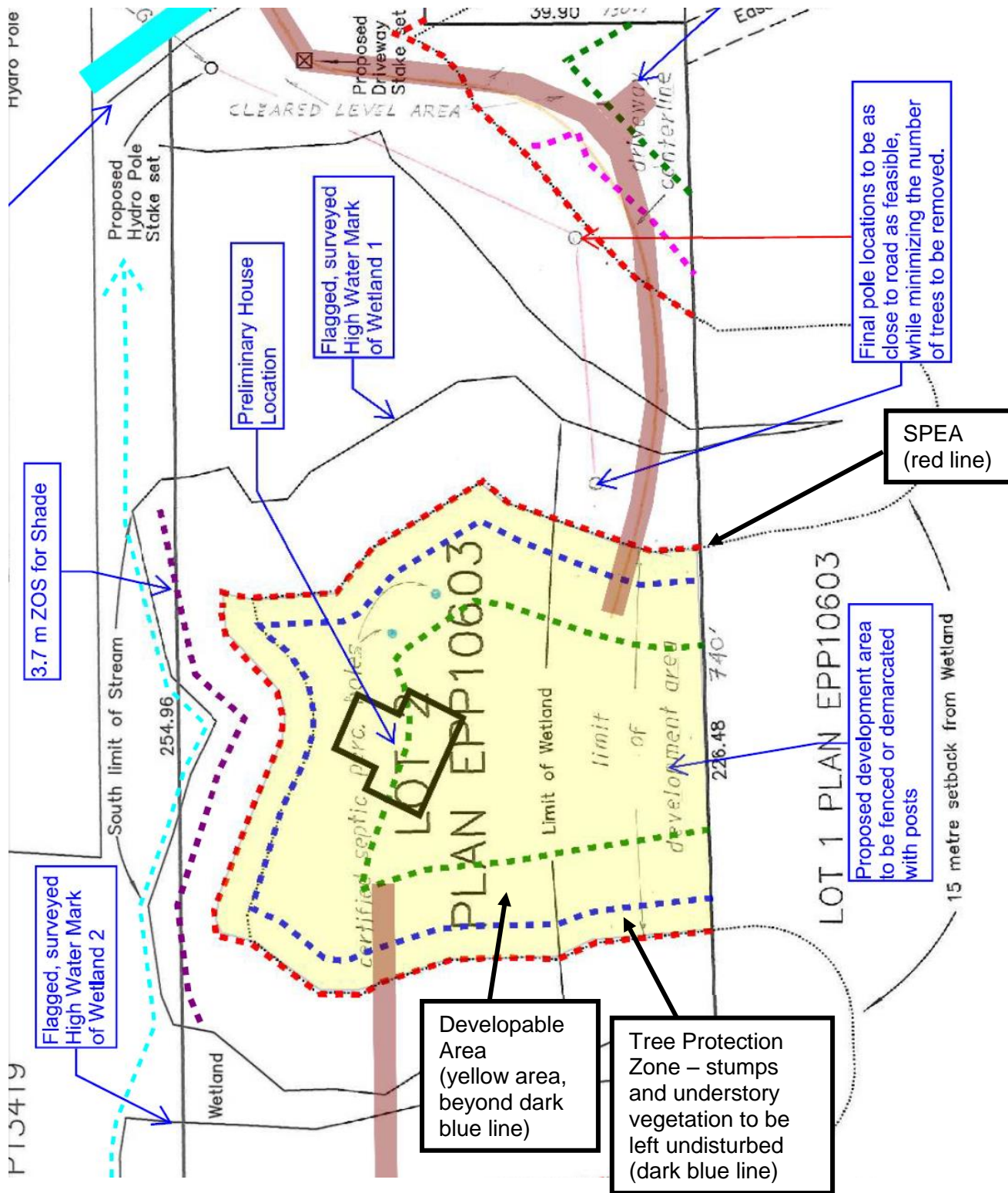
### Conditions of Approval

1. The site is developed in accordance with the Site Plan prepared by EDI Environmental Dynamics Inc, dated January 2, 2019 and the Site Plan prepared by Oceanside Geomatics Land Surveying Ltd, dated June 12, 2019, attached as Schedule 2.
2. The subject property shall be developed in accordance with the recommendations contained in the Riparian Areas Assessment prepared by EDI Environmental Dynamics Inc, dated January 2, 2019 and any updated versions submitted to the Province in regards to the final location of the dwelling unit, residential accessory buildings and structures, and hydro poles. To be clear, the yard area and associated residential servicing may be developed within the area marked in yellow, in accordance with the conditions outlined by EDI Environmental Dynamics Inc.
3. Stream Crossings and Bridge Structures shall be constructed in accordance with the plans prepared by Herold Engineering dated March 1, 2019, and the Hydrologic Assessment dated April 11, 2019. Any revisions are subject to review and approval by Strategic and Community Development as well as any relevant Provincial agencies.
4. The property owner shall provide confirmation in the form of a report prepared by a Qualified Environmental Professional (QEP), to the satisfaction of Strategic and Community Development, that development of the subject property has occurred in accordance with the QEP's recommendations prior to the issuance of occupancy on the dwelling unit.
5. Development shall occur in accordance with any approvals, authorizations or permits that may be required by provincial, federal, or other authority, including but not limited to the Ministry of Forests, Lands, Natural Resource Operations and Rural Development, the Ministry of Transportation and Infrastructure, BC Hydro, and the Island Health Authority.
6. The property owner shall obtain the necessary permits for construction in accordance with Regional District of Nanaimo Building Regulations.



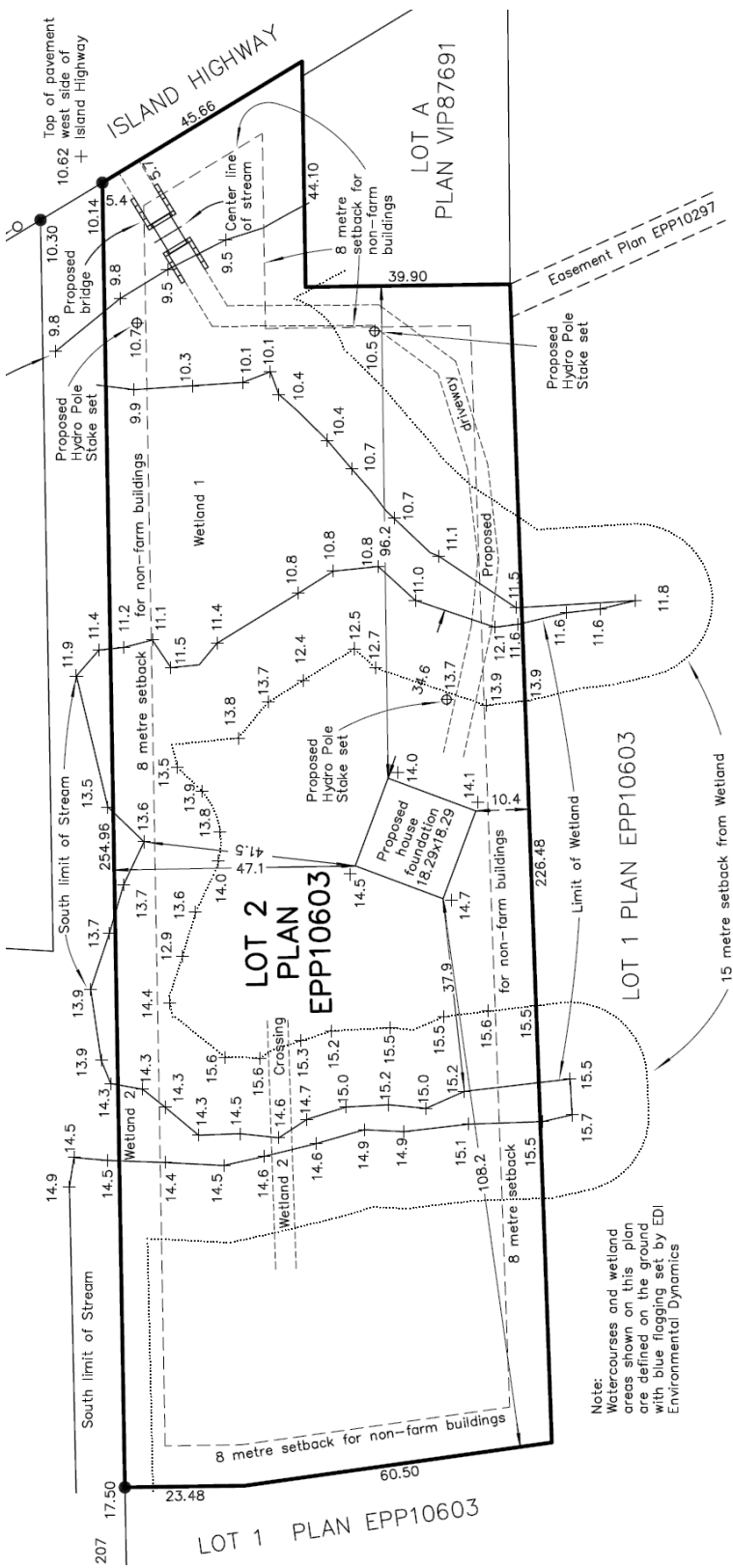


**Schedule 2**  
**Plan of SPEA (2 of 2)**  
*enlarged for convenience*



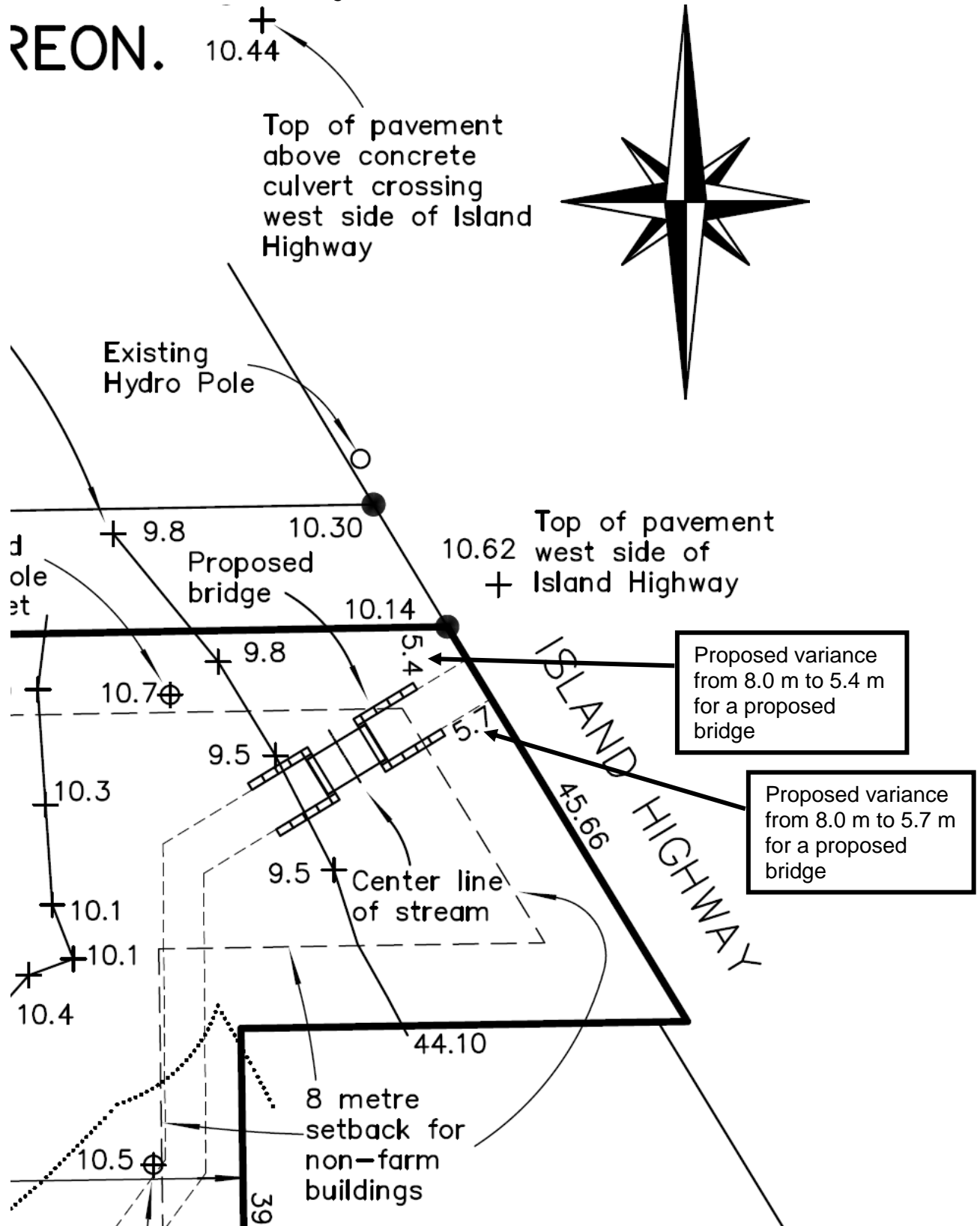


**Schedule 2**  
**Survey Plan (2 of 3)**  
*enlarged for convenience*

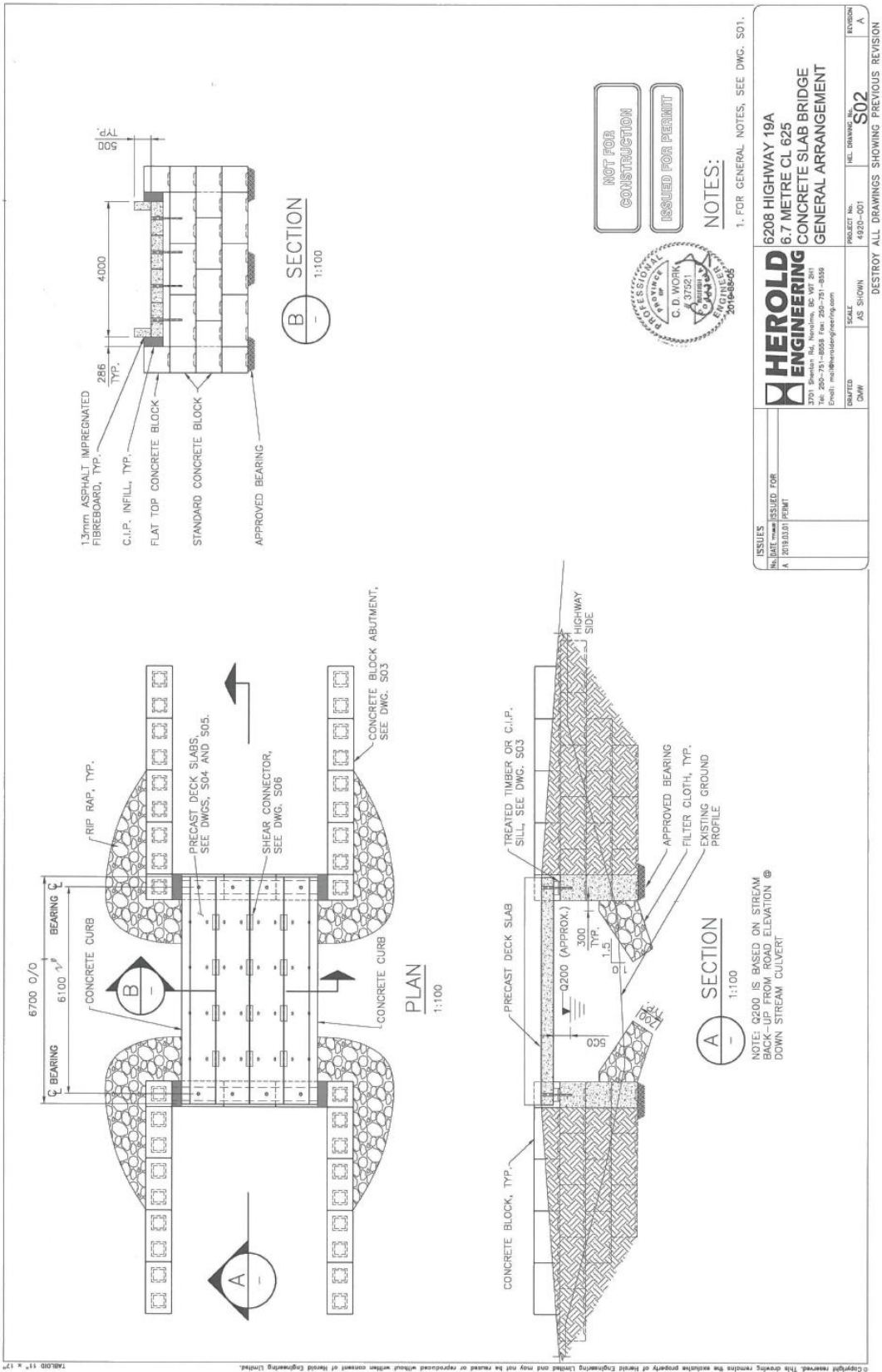




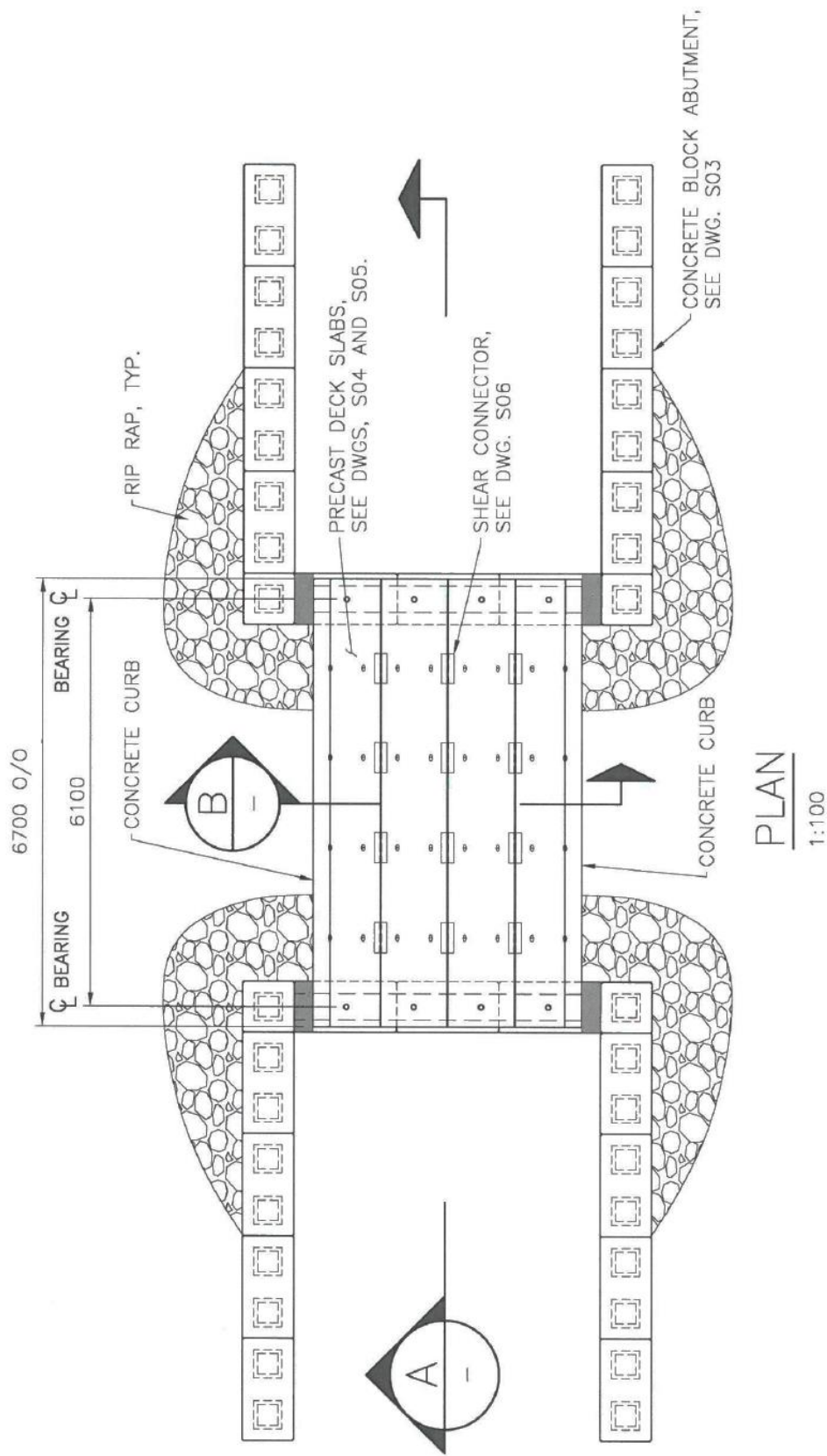
**Schedule 2**  
**Survey Plan – Proposed Variance (3 of 3)**  
*enlarged for convenience*



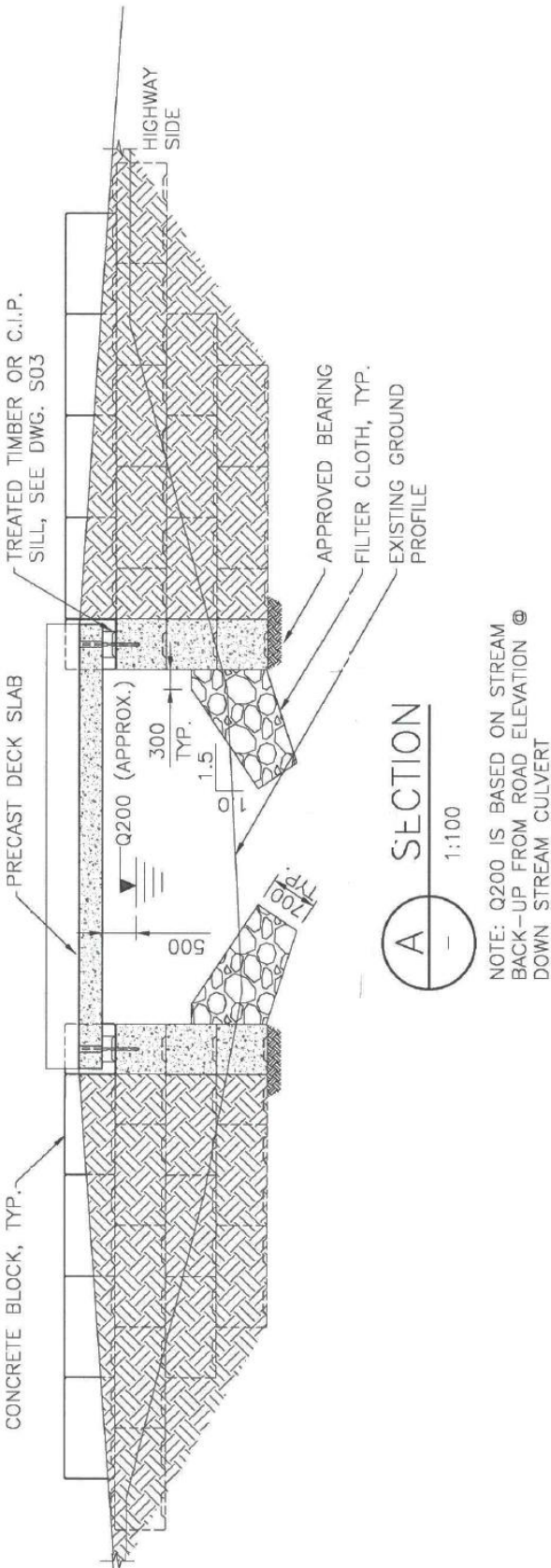
**Schedule 3**  
**Stream Crossing Details**  
**(1 of 5)**



**Schedule 3**  
**Stream Crossing Details**  
**(2 of 5)**

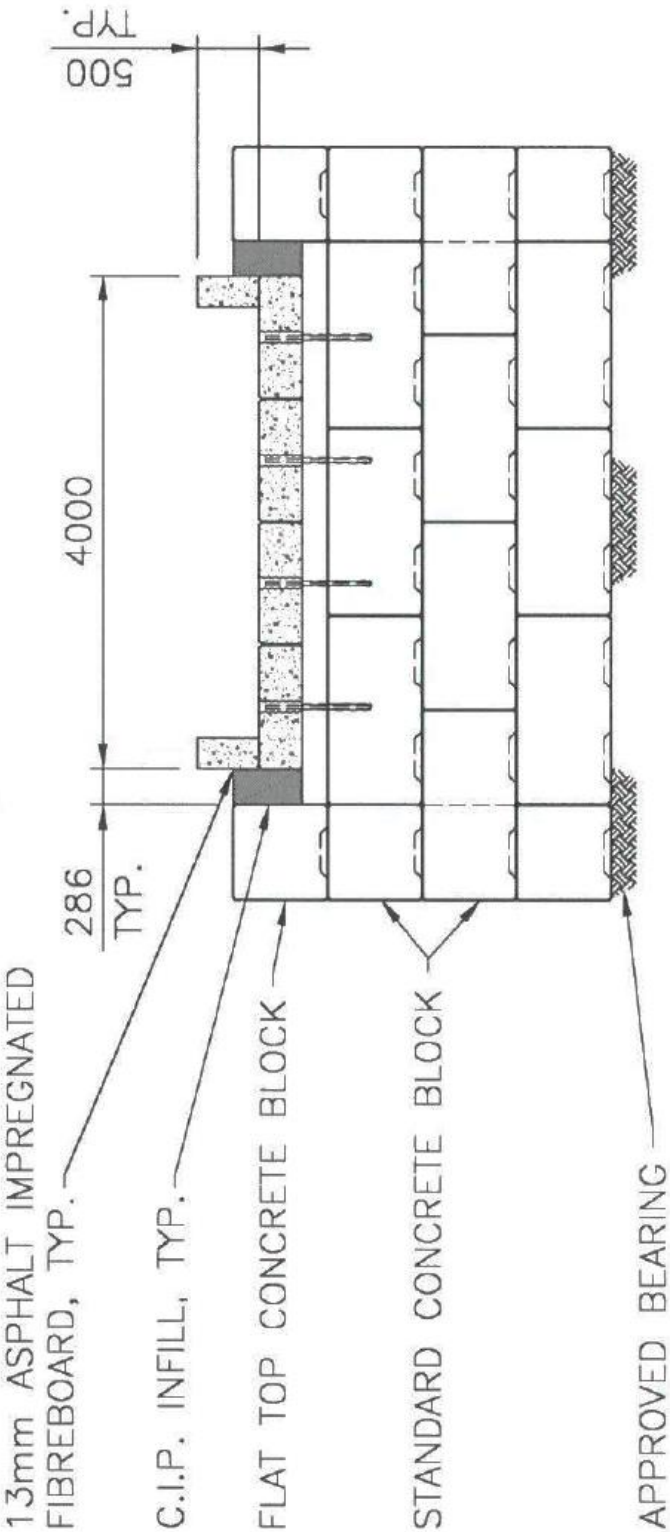


Schedule 3  
Stream Crossing Details  
(3 of 5)



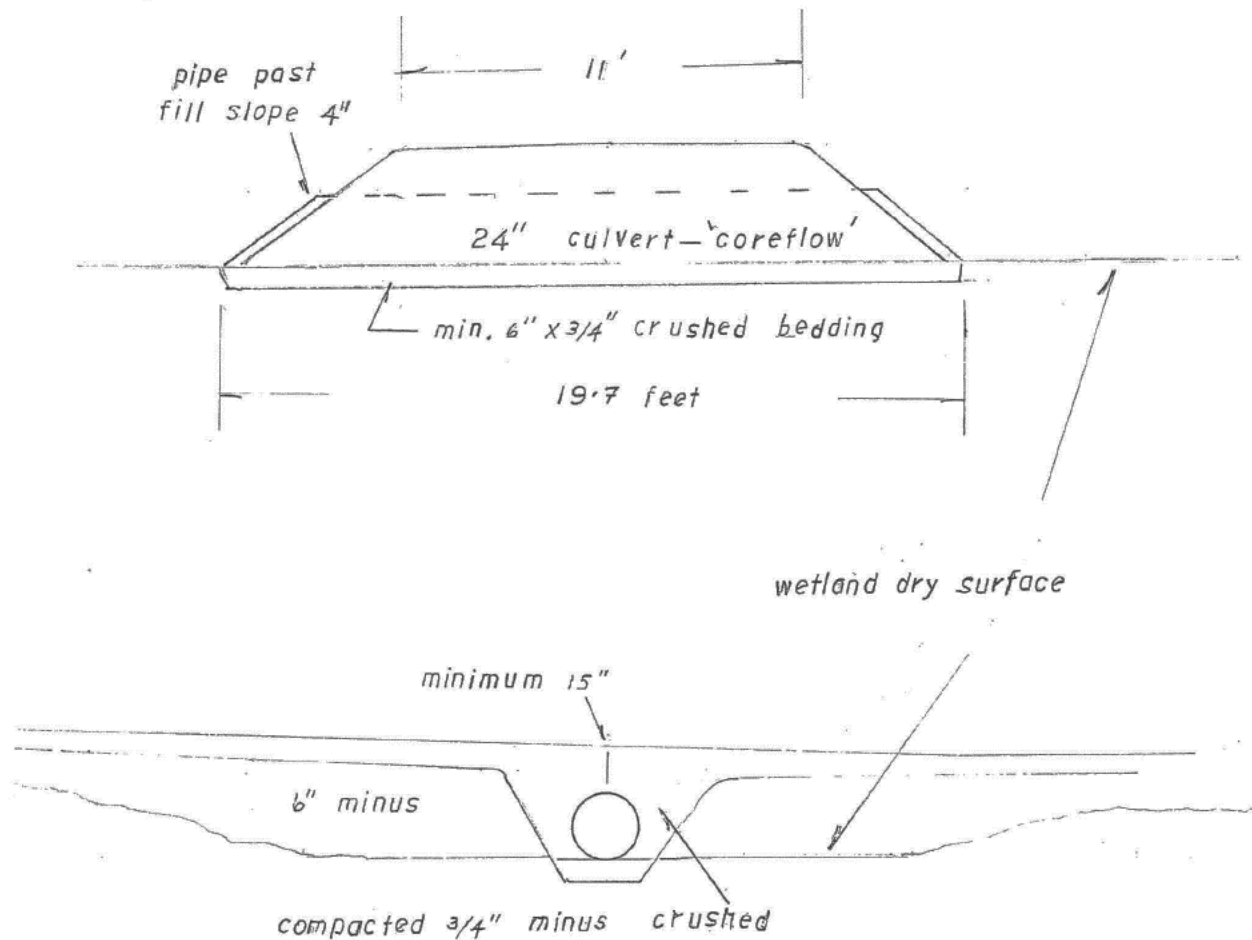


Schedule 3  
Stream Crossing Details  
(4 of 5)



B SECTION  
1:100

**Schedule 3**  
**Stream Crossing Details**  
**(5 of 5)**



WETLANDS 1 & 2 — TYPICAL

refer to: — site map dated — 2018-09-14

— pages 6 & 7 R.A.R report-2019-01-02

by Adam Compton E.D.I.