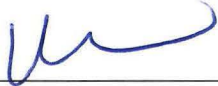


CITY OF MARYSVILLE AGENDA BILL

EXECUTIVE SUMMARY FOR ACTION

CITY COUNCIL MEETING DATE: April 8, 2019

AGENDA ITEM: First Street Bypass Project Purchase of Wetland Credits.	
PREPARED BY: Steven Miller, Senior Project Manager	DIRECTOR APPROVAL: 
DEPARTMENT: Public Works / Engineering	
ATTACHMENTS: <ul style="list-style-type: none">• February 21, 2019 Letter from US Army Corps of Engineers• Snohomish Basin Mitigation Bank Brochure• Wetland Mitigation Credit Buy/Sell Agreement	
BUDGET CODE: 30500030.563000, R0901	AMOUNT: \$224,700
SUMMARY:	

In accordance with an environmental permit recently received from the US Army Corps of Engineers, the City is obligated to mitigate for impacts to wetland areas that occur as a result of the upcoming First Street Bypass Project. The City determined that the most efficient way to do so would be through purchase of wetland mitigation “credits” from an approved wetland bank.

The attached Buy/Sell Agreement between the City and Mitigation Banking Services, LLC is for the purchase of 1.07 mitigation credits at an overall purchase price of \$224,700.00 for mitigation of impacts to Category II wetlands which are located between Alder Avenue and 47th Avenue, in the area of the new Bypass roadway.

RECOMMENDED ACTION: Staff recommends that Council authorize the Mayor to execute the Buy/Sell agreement with Mitigation Banking Services, LLC. for the purchase of 1.07 wetland credits to mitigate unavoidable wetland impacts from the First Street Bypass project.



DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, SEATTLE DISTRICT
P.O. BOX 3755
SEATTLE, WASHINGTON 98124-3755

FEB 21 2019

Regulatory Branch

Mr. Jeff Laycock
City of Marysville Public Works
80 Columbia Avenue
Marysville, Washington 98270

Reference: NWS-2017-675
Marysville. City of
(First Street Bypass)

Dear Mr. Laycock,

We have reviewed your application to discharge fill in no more than 0.50 of an acre of wetland to construct a new road in "Wetland A" at Marysville, Snohomish County, Washington. Based on the information you provided to us, Nationwide Permit (NWP) 14, *Linear Transportation Projects* (Federal Register January 6, 2017, Vol. 82, No. 4), authorizes your proposal as depicted on the enclosed drawings dated April 2018, provided you implement the *Wetland Bank Use Plan* dated November 2018.

In order for this authorization to be valid, you must ensure the work is performed in accordance with the enclosed *NWP 14, Terms and Conditions* and the following special conditions:

a. The U.S. Army Corps of Engineers (Corps) made a determination of No Effect for all species and critical habitat based on the information provided in the *Joint Aquatic Resource Permit Application*, signed by you on June 6, 2018. Failure to comply with the commitments made in this document constitutes non-compliance with the ESA and your Corps permit.

b. You shall implement and abide by the *Wetland Bank Use Plan* dated November 2018, and obtain mitigation bank credits from the Skykomish Habitat Mitigation Bank in accordance with Table 1 of the Bank Use Plan.

c. You shall obtain from the Skykomish Habitat Mitigation Bank sponsor, documentation of the completed mitigation bank transaction. You shall submit to the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, documentation on the completed mitigation bank

transaction prior to performing work in waters of the U.S. authorized by this permit. All submittals must prominently display the reference number NWS-2017-675.

d. You shall implement and abide by the *Restoration Plan, Landscaping Plan*, dated September 14, 2018. To ensure the project results in a net increase in aquatic resource functions and services, an as-built report and drawings shall be submitted within six months of project completion. This report should state if any adaptive management is required to ensure a net increase in aquatic resource functions; if this work would require additional impacts to waters of the U.S., you must wait for approval by the U.S. Army Corps of Engineers, Seattle District, Regulatory Branch, before commencing that work. The as-built report must prominently display the reference number NWS-2017-675.

We have reviewed your project pursuant to the requirements of the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act and the National Historic Preservation Act. We have determined this project complies with the requirements of these laws provided you comply with all of the permit general and special conditions.

The authorized work complies with the Washington State Department of Ecology's (Ecology) Water Quality Certification (WQC) requirements and Coastal Zone Management (CZM) consistency determination response for this NWP. No further coordination with Ecology for WQC and CZM is required.

You have not requested a jurisdictional determination for this proposed project. If you believe the U.S. Army Corps of Engineers does not have jurisdiction over all or portions of your project you may request a preliminary or approved jurisdictional determination (JD). If one is requested, please be aware that we may require the submittal of additional information to complete the JD and work authorized in this letter may not occur until the JD has been completed.

Our verification of this NWP authorization is valid until March 18, 2022, unless the NWP is modified, reissued, or revoked prior to that date. If the authorized work has not been completed by that date and you have commenced or are under contract to commence this activity before March 18, 2022, you will have until March 18, 2023, to complete the activity under the enclosed terms and conditions of this NWP. Failure to comply with all terms and conditions of this NWP verification invalidates this authorization and could result in a violation of Section 404 of the Clean Water Act. You must also obtain all local, State, and other Federal permits that apply to this project.

Upon completing the authorized work, you must fill out and return the enclosed *Certificate of Compliance with Department of the Army Permit*. Thank you for your cooperation during the permitting process. We are interested in your experience with our Regulatory Program and

encourage you to complete a customer service survey. These documents and information about our program are available on our website at www.nws.usace.army.mil, select "Regulatory Branch, Permit Information" and then "Contact Us." A copy of this letter with enclosures will be furnished to Mr. Dan Roscoe at dan.roscoe@abam.com. If you have any questions, please contact me at bethany.f.nickison@usace.army.mil or (206) 316-3165.

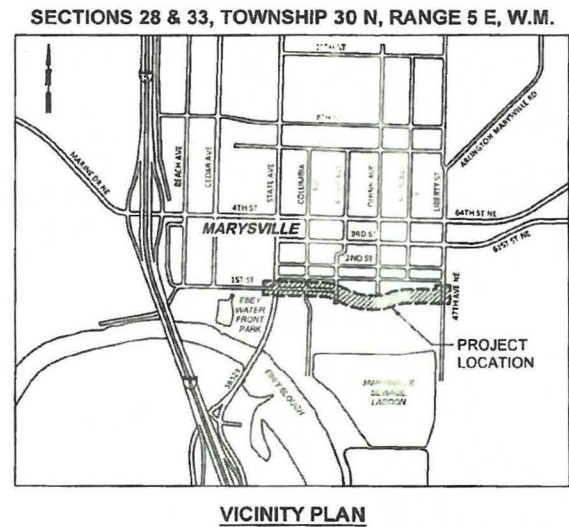
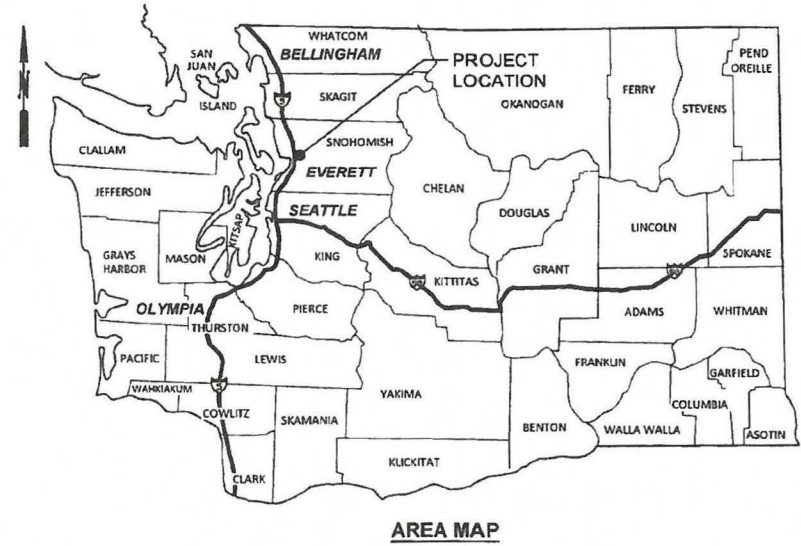
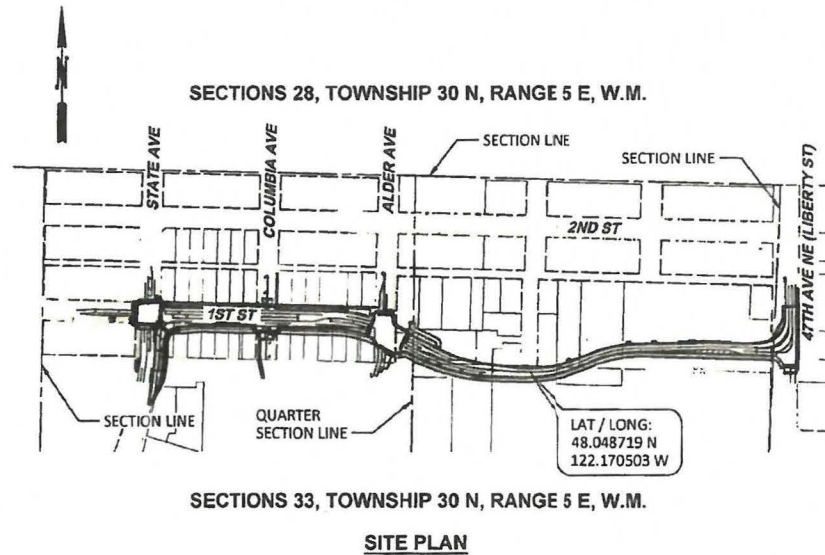
Sincerely,

A handwritten signature in black ink, appearing to read "Bethany Nickison". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bethany Nickison, Project Manager
Regulatory Branch

Enclosures

CITY OF MARYSVILLE SNOHOMISH COUNTY, WASHINGTON FIRST STREET BYPASS



PRELIMINARY

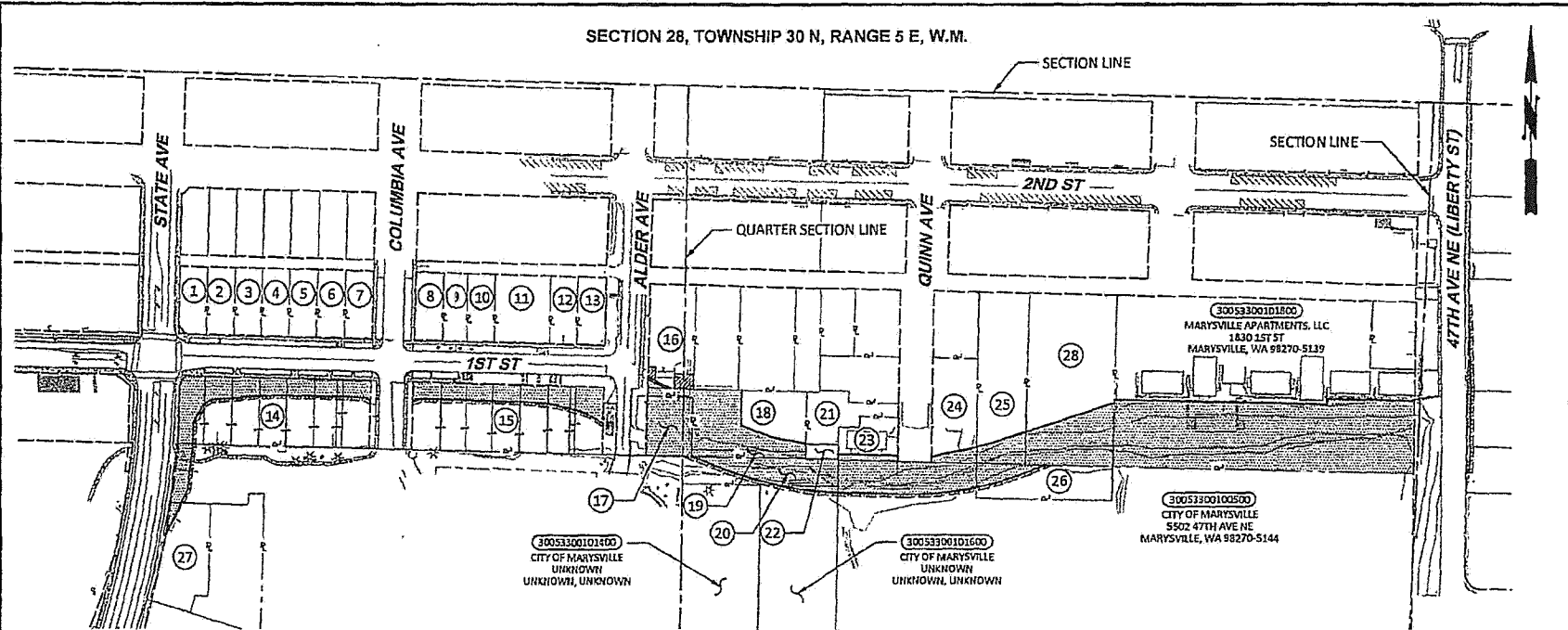
33301 9th Avenue South, Suite 300
Federal Way, Washington 98003-2600
(206) 431-2300 Fax: (206) 431-2250

VICINITY MAP

LAT/LONG: 48.048719N / 122.170503 W
DATUM: WASHINGTON STATE PLANE NAD83
DATE: APRIL 2018

REFERENCE NO: NWS-2017-675
APPLICANT NAME: CITY OF MARYSVILLE
ADJACENT PROPERTY OWNERS: SEE SHEET 2
PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
IN: WETLANDS
NEAR/AT: CITY OF MARYSVILLE
COUNTY: SNOHOMISH
STATE: WASHINGTON

SHEET
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OF
9
SHEETS



SECTION 33, TOWNSHIP 30 N, RANGE 5 E, W.M.

LEGEND:

- EXISTING RIGHT-OF-WAY LINE
- EXISTING PROPERTY LINE
- TOWNSHIP SECTION LINE
- PROPOSED RIGHT-OF-WAY LINE
- TEMPORARY EASEMENT LINE
- SLOPE EASEMENT LINE
- RIGHT-OF-WAY ACQUISITION
- PROPOSED EASEMENT AREA

1	005110050000 MCKINLEY CARLH 22 STATE AVE MARYSVILLE, WA 98270-5132	6	00551100501300 VAT DE HEE CAROLYN 323 1ST ST MARYSVILLE, WA 98270-5112	11	00551100601100 DUNLAP JAMES ANDREW/JACINDA M 1015 1ST ST MARYSVILLE, WA 98270-5114	16	30053300104000 BARSTAD HERBERT & DIANA 104 ALDER AVE MARYSVILLE, WA 98270-5135	21	00686200000200 HUTTER RUSSELL 83 QUINN AVE MARYSVILLE, WA 98270-5132	26	UNKNOWN UNKNOWN UNKNOWN, UNKNOWN
2	005110050000 MCKINLEY CARLH 1505 1ST ST MARYSVILLE, WA 98270-5112	7	00551100501400 GRIFFITH ROBERT L 1525 1ST ST MARYSVILLE, WA 98270	12	00551100601300 WAGNER SAM/AMANDA 1623 1ST ST MARYSVILLE, WA 98270-5114	17	30053300101500 CITY OF MARYSVILLE 86 ALDER AVE MARYSVILLE, WA 98270	22	30053300106200 CITY OF MARYSVILLE UNKNOWN, UNKNOWN	27	30053300104000 SYNERGY SERVICES GROUP LLC 70 STATE AVE MARYSVILLE, WA 98270
3	00511005010000 MCKINLEY CARLH 1509 1ST ST MARYSVILLE, WA 98270-5112	8	00551100600800 CUMMINGS WESLEY & TERI 104 COLUMBIA AVE MARYSVILLE, WA 98270-5131	13	00551100601400 MCCAULEY ROBERT K & ROCKY J 1627 1ST ST MARYSVILLE, WA 98270-5114	18	30053300102400 WILLIAM J FINKE UNKNOWN MARYSVILLE, WA 98270	23	00686200000300 MOATE THOMAS 91 QUINN AVE MARYSVILLE, WA 98270-5165	28	30053300102000 PARIWARAK INC/AULCK UNKNOWN, UNKNOWN
4	00511005011000 ANDERSON JON & RACHEL/ 1515 1ST ST MARYSVILLE, WA 98270-5112	9	00551100600900 BORG D PAUL & RAMI LYNN 1605 1ST ST MARYSVILLE, WA 98270-5114	14	— CITY OF MARYSVILLE 1508 - 1526 1ST ST MARYSVILLE, WA 98270-5113	19	30053300101900 FINKE WILLIAM J UNKNOWN UNKNOWN, UNKNOWN	24	00686200000400 EGENBUS INVESTMENTS LLC 92 QUINN AVE MARYSVILLE, WA 98270-5166		
5	00511005012000 ANDERSON JEFFREY 1517 1ST ST MARYSVILLE, WA 98270-5112	10	00551100601000 WILSON CONNER/SAMANTHA 1609 1ST ST MARYSVILLE, WA 98270-5114	15	— CITY OF MARYSVILLE 1604 - 1632 1ST ST MARYSVILLE, WA 98270-5113	20	UNKNOWN UNKNOWN UNKNOWN, UNKNOWN	25	30053300102200 PARIWARAK INC/AULCK UNKNOWN, UNKNOWN		



NAD 83
140 0 140 280
scale feet

EXISTING CONDITION AND OWNERSHIP

REFERENCE NO: NWS-2017-675
 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

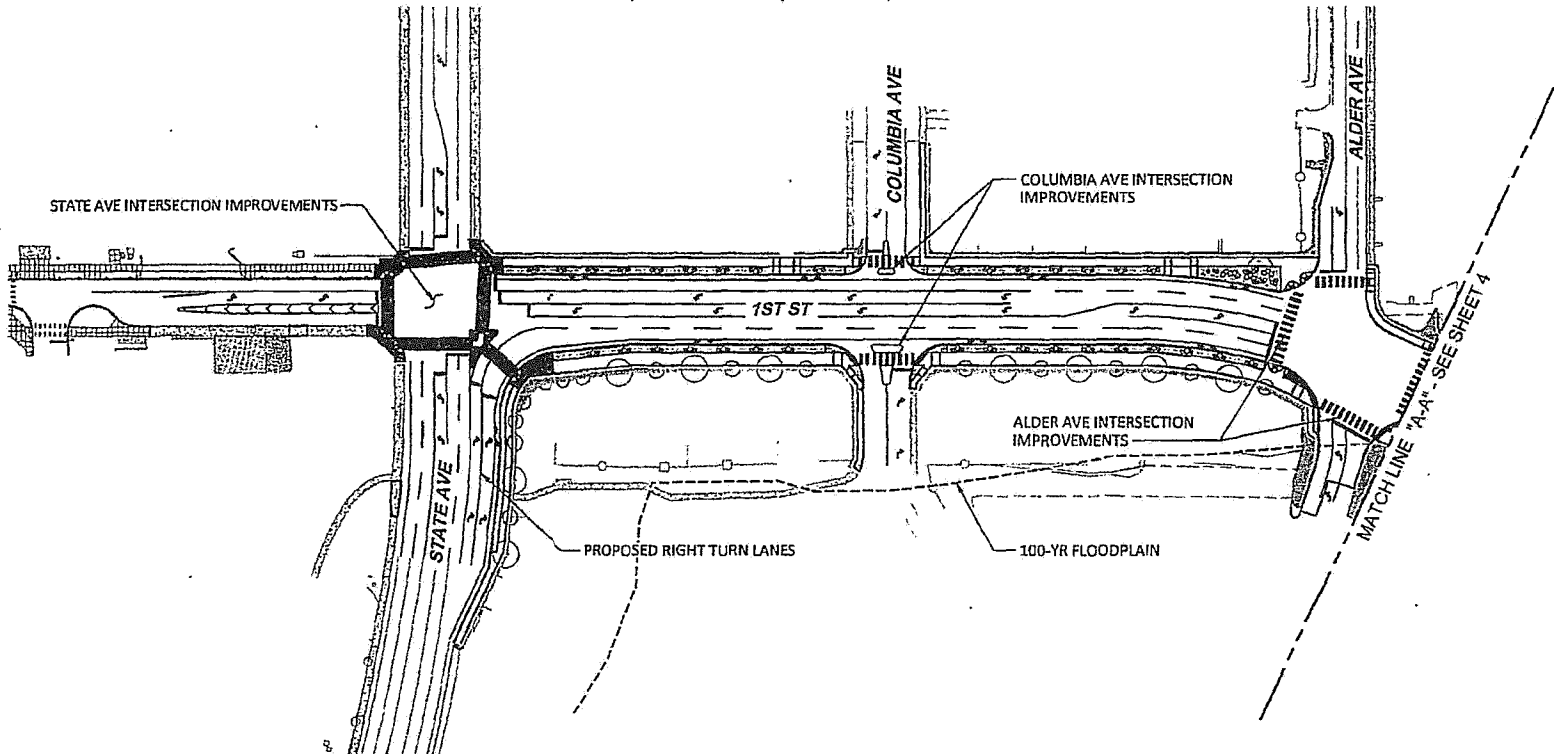
SHEET
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PRELIMINARY






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SECTION 33, TOWNSHIP 30' N, RANGE 5 E, W.M.



LEGEND

-  INTEGRAL COLORED STAMPED CONCRETE CROSSWALK
-  BIORETENTION PLANTING AREA
-  GRASS AREA
-  SHRUBS
-  TREES



**PROPOSED FIRST STREET BYPASS
WEST SEGMENT**

REFERENCE NO: NWS-2017-675
 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

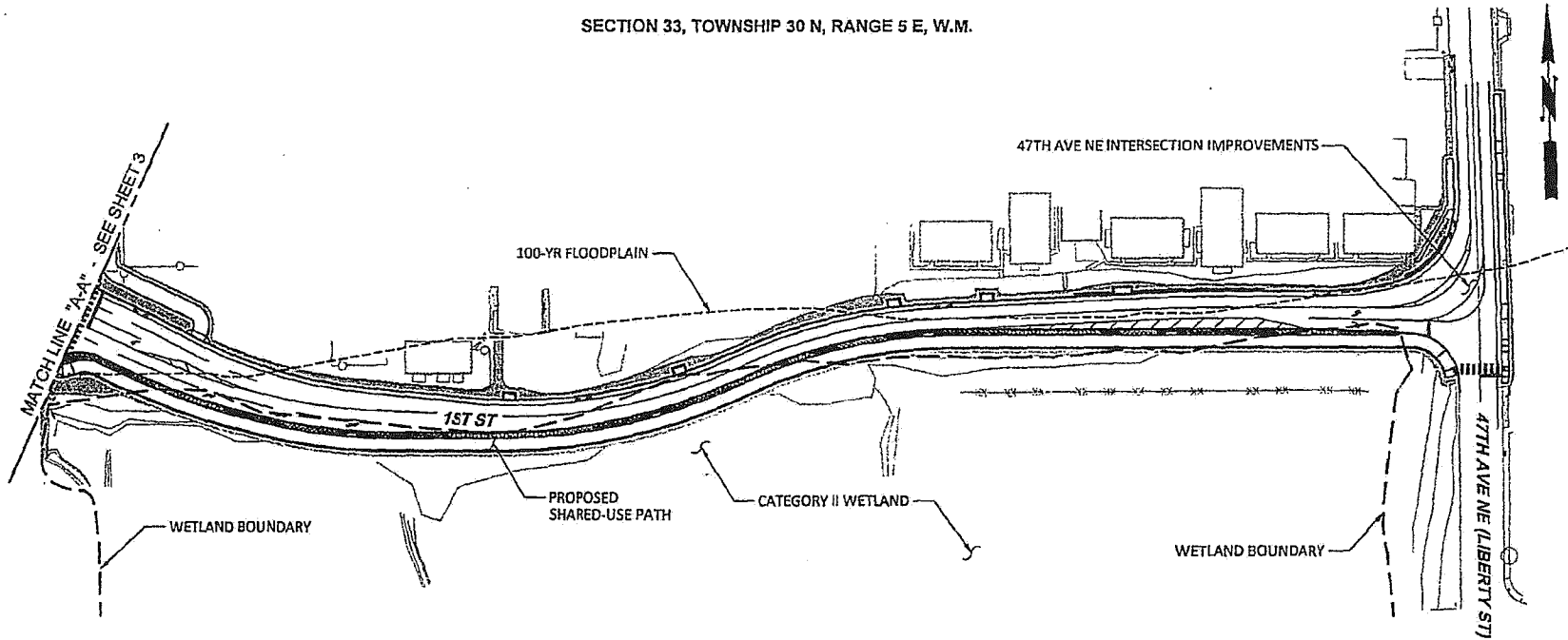
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PRELIMINARY

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


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SECTION 33, TOWNSHIP 30 N, RANGE 5 E, W.M.



PROPOSED ROADWAY (EAST SEGMENT)

LEGEND

-  INTEGRAL COLORED STAMPED CONCRETE CROSSWALK
-  BIORETENTION PLANTING AREA
-  GRASS AREA
-  SHRUBS
-  TREES



NAD 83



PRELIMINARY

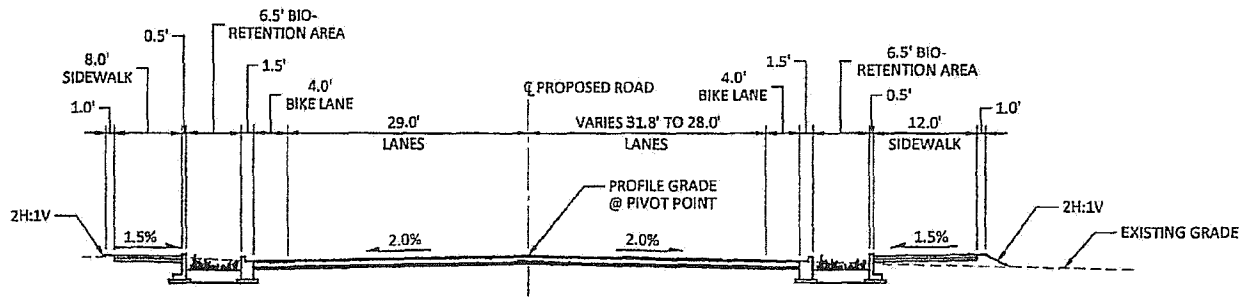
**PROPOSED FIRST STREET BYPASS
EAST SEGMENT**

REFERENCE NO: NWS-2017-675
 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

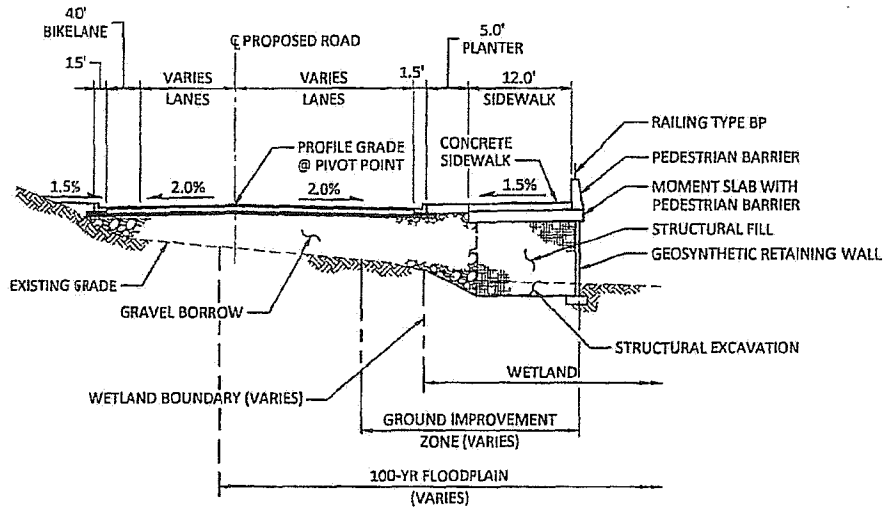
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A TYPICAL SECTION - STATE AVE TO ALDER AVE
SCALE: 1"=10'



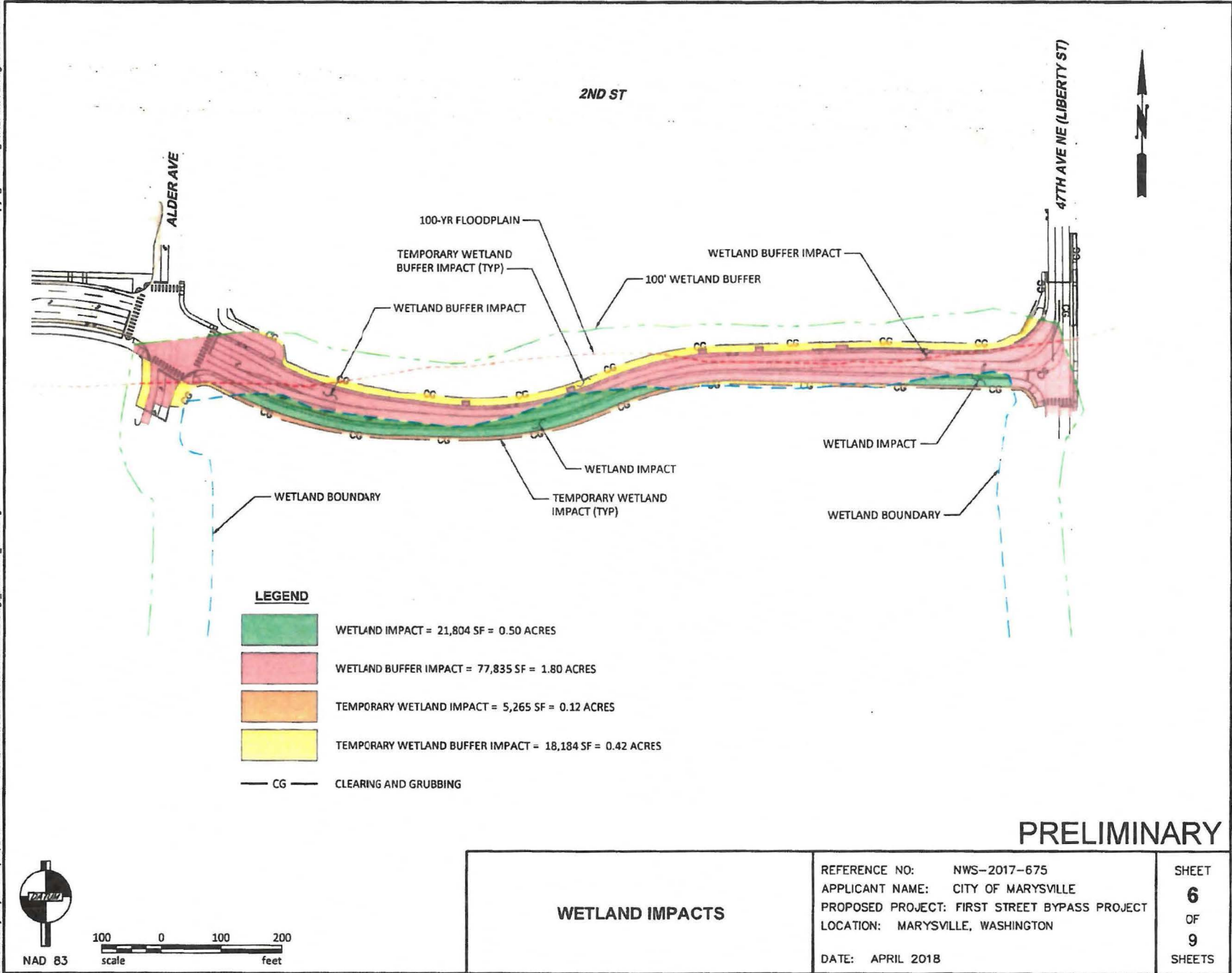
B TYPICAL SECTION - ALDER AVE TO 47TH AVE NE
SCALE: 1"=10'

PRELIMINARY



NAD 83

TYPICAL ROAD SECTIONS	REFERENCE NO: NWS-2017-675	5 OF 9 SHEETS
	APPLICANT NAME: CITY OF MARYSVILLE PROPOSED PROJECT: FIRST STREET BYPASS PROJECT LOCATION: MARYSVILLE, WASHINGTON	
	DATE: APRIL 2018	



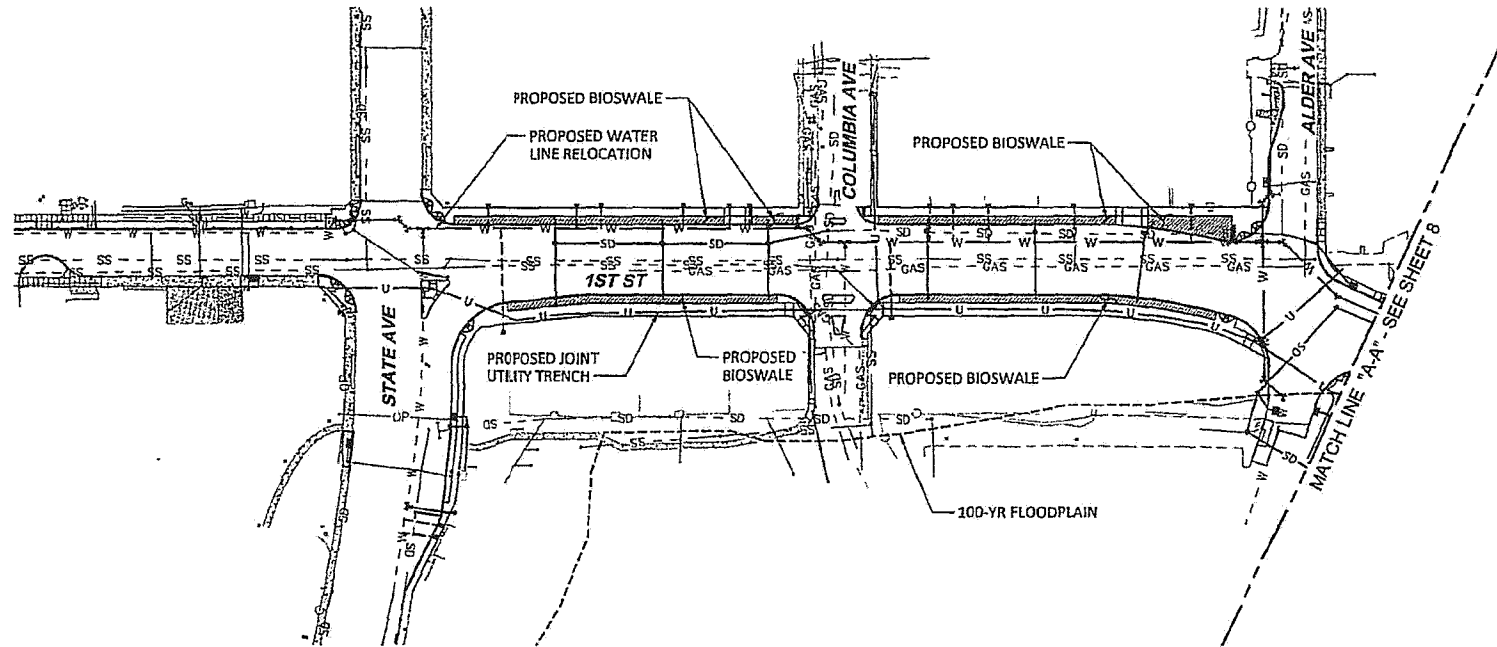
PRELIMINARY

WETLAND IMPACTS

REFERENCE NO: NWS-2017-675
 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

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SECTION 33, TOWNSHIP 30 N, RANGE 5 E, W.M.



PROPOSED DRAINAGE AND UTILITIES (WEST SEGMENT)

LEGEND

- PROPOSED JOINT UTILITY TRENCH ROUTE
- PROPOSED WATER LINE
- PROPOSED STORM LINE
- STORM STRUCTURE
- WATER QUALITY UNIT
- PROPOSED OUTFALL
- BIOSWALE AREA W/ OIL CONTROL MEDIA



NAD 83



PRELIMINARY

**PROPOSED DRAINAGE AND UTILITIES
WEST SEGMENT**

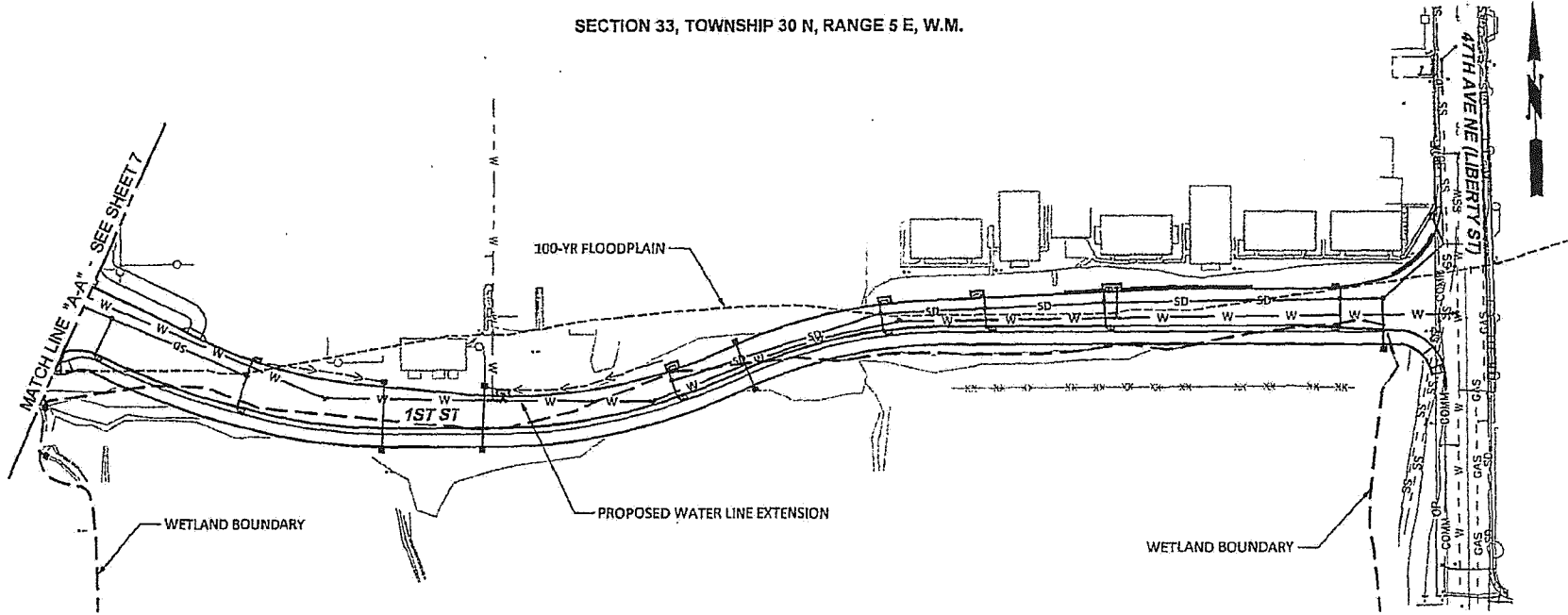
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 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

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SECTION 33, TOWNSHIP 30 N, RANGE 5 E, W.M.



PROPOSED DRAINAGE AND UTILITIES (EAST SEGMENT)

LEGEND

- PROPOSED JOINT UTILITY TRENCH ROUTE
- PROPOSED WATER LINE
- PROPOSED STORM LINE
- STORM STRUCTURE
- WATER QUALITY UNIT
- PROPOSED OUTFALL
- BIOSWALE AREA W/ OIL CONTROL MEDIA



NAD 83



PROPOSED DRAINAGE AND UTILITIES
EAST SEGMENT

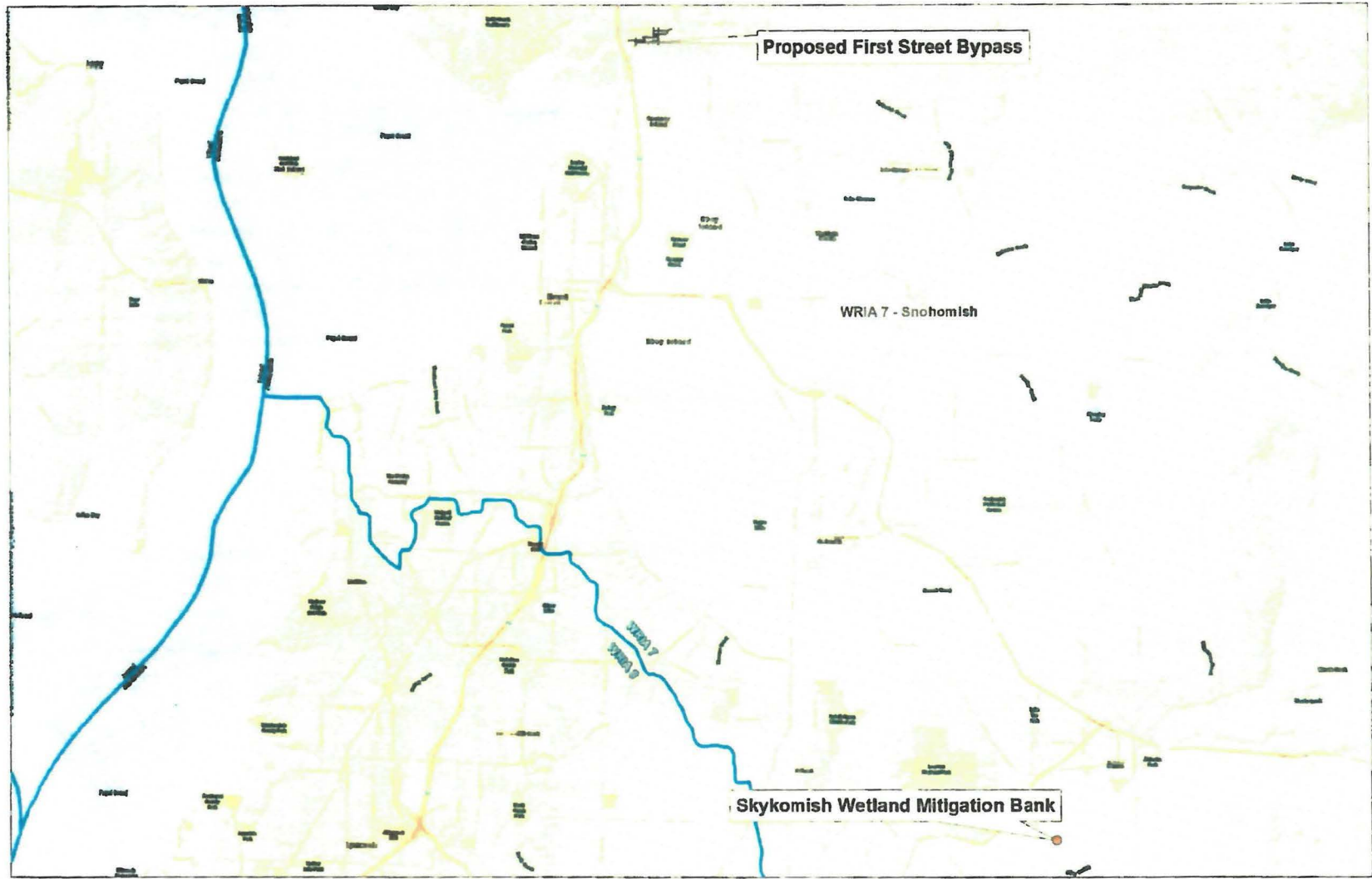
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 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

PRELIMINARY

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PRELIMINARY

MITIGATION

REFERENCE NO: NWS-2017-675
 APPLICANT NAME: CITY OF MARYSVILLE
 PROPOSED PROJECT: FIRST STREET BYPASS PROJECT
 LOCATION: MARYSVILLE, WASHINGTON
 DATE: APRIL 2018

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- [Home](#)
- [About MBS](#)
 - [Battle Ground Project](#)
 - [Columbia River Bank](#)
 - [East Fork Lewis Bank](#)
 - [Long Beach Bank](#)
 - [Skykomish Habitat Bank](#)
 - [Snohomish Basin Bank](#)
- [Benefits of Banking](#)
- [Contact](#)
- [Links](#)
- [Using Credits](#)

Snohomish Basin Bank

Project Description

Prior to European settlement, the floodplains surrounding Pearson Eddy near the confluence of the Snoqualmie and Skykomish Rivers were part of a large and diverse wetland complex. These wetlands were fed by a series of streams running through the valley and constant backwatering and flooding of the Snoqualmie River. Since the early 1900's, this land has been cleared, drained, and diked to allow for agriculture and more recently dairy farming. The Snohomish Basin Bank (SBMB) was primarily a level monoculture of non-native pasture grasses and too wet to farm when flooding of the river occurred.



Phase 2 Emergent and Aqu...



Channel Creation



Pearson Eddy Connection t...



Phase 2 Emergent and Aqu...



Overlooking Phase 1 and 2



Shrub Wetlands



Emergent Wetlands



Shrub and Emergent Wetland



Phase 2 Aquatic Bed Fall 2018

GALLERY POWERED BY CINCOPA  Like 32K

Restoration Activities

The SBMB has restored approximately 200 acres back to historical habitat conditions. The project has reconnected and reestablished a series of stream channels, associated riparian wetlands, depressional wetlands and forested uplands which support a wide variety of plant and animal life. Rich soils and a dynamic hydrologic influence from the river sustain native wetland plants within aquatic bed, emergent, shrub and forested wetland classes. Additionally, the project provides off-channel rearing and refuge for salmonids which is a limiting factor in the Snoqualmie System. With the completion of the SBMB and the surrounding restoration activities adjacent to the project, more than 600 acres of floodplain habitat including wetlands, uplands and riparian areas will be restored in this area.

Project Representative Contact Information:

Zach Woodward

Ph: (425) 205-0279

[Email Zach](#)

Service Area

The SBMB offers wetland, stream, and buffer impact credits for local, State and Federal permits for impacts within the Service Area. ESA credits for improvement to salmon habitat will be requested in the future as these markets begin to develop.

Google

This page can't load Google Maps correctly.

[Do you own this website?](#)

OK

[snoho_SA_bnd](#) in a larger map

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**WETLAND MITIGATION CREDIT BUY/SELL AGREEMENT
MITIGATION BANKING SERVICES**

This Wetland Mitigation Credit Buy/Sell Agreement (“Agreement”) is made by and between Mitigation Banking Services, LLC, a Washington limited liability company (“MBS” or “Credit Seller”), and City of Marysville, a political subdivision of the State of Washington (“Buyer”) (collectively “Parties”).

1. RECITALS

- 1.1. Mitigation Banking Services, LLC has been contracted by the Snohomish Basin Mitigation Bank (“SBMB”) and the Skykomish Habitat Mitigation Bank (“SHMB”) to market and sell their mitigation credits.
- 1.2. With approval and authorization from the Washington State Department of Ecology (“Ecology”), U.S. Army Corps of Engineers (“Corps”), Environmental Protection Agency (“EPA”), Washington State Department of Natural Resources (“DNR”), and Snohomish County (“County”) (collectively the “Permitting Authorities”), the SBMB and SHMB have been established.
- 1.3. The SBMB and SHMB are established to operate within a portion the State of Washington’s Water Resource Inventory Area Number 7 (“WRIA No. 7”), which portion constitutes the banks “Service Area.”
- 1.4. The purpose of the SBMB and SHMB are to provide off-site mitigation for unavoidable impacts to wetlands and other critical area associated with certain development activity within the Service Area.
- 1.5. The SBMB and SHMB are authorized by the Permitting Authorities to sell and transfer wetland and critical area mitigation credits for permits, said credits being units of trade representing the increase in ecological value of a site, as measured by acreage, functions, and/or values (“Mitigation Credits”).
- 1.6. Buyer contemplates undertaking a development activity within the Service Area (“Project”), which will require permits and/or approvals (“Permit(s)”) from regulatory agencies and which development activity may cause unavoidable impacts to wetlands or other critical areas and may require mitigation. Buyer is solely responsible for determining whether such mitigation can be satisfied by its acquisition of Mitigation Credits.
- 1.7. Buyer wishes to purchase from MBS and MBS wishes to sell to Buyer Mitigation Credits from the SBMB and or the SHMB for the Project on the terms and conditions contained in this Agreement.

2. **AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants and conditions and promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Credit Seller and Buyer agree as follows:

2.1. **Purchase/Sale of Mitigation Credits**

2.1.1. **Purchase/Sale.** Credit Seller hereby sells to Buyer and Buyer hereby buys from Credit Seller: (1.07) Mitigation Credits from the Skykomish Habitat Mitigation Bank upon all of the terms, covenants, and conditions set forth in this Agreement (“Project Mitigation Credits”).

2.1.2. **Purchase Price.** The purchase price for the Project Mitigation Credits shall be: Two-hundred and twenty-four thousand seven-hundred and 00/100 Dollars (U.S. \$224,700.00) (“Purchase Price”).

2.1.3. **Payment.** Buyer agrees to pay the Purchase Price to Credit Seller within 30 days of the effective date.

2.2. **Buyer’s Obligations/Limitation on Transfer of Mitigation Credits/Project Information.**

2.2.1. **Mitigation Credits for Project.** Buyer shall be solely responsible for determining whether the Mitigation Credits may be used for the Project and the Permit(s). Credit Seller provides no representation or warranty as to the utility or applicability of the Mitigation Credits to the Project or Permit(s). Buyer acknowledges and agrees that Credit Seller shall sell the Project Mitigation Credits specifically for the Permit(s) identified in Section 2.2.2 below and that, as of Closing, said credits shall not be transferable.

2.2.2. **Project.** *[to be completed by Buyer]* The Project, Permit(s), and related information is as follows:

2.2.2.1. Buyer’s name, address, & telephone number:

City of Marysville Public Works
City Engineer Jeff Laycock
80 Columbia Avenue
Marysville, WA 98270
360-363-8274

2.2.2.2. Permitting Agency(ies) name(s), address(es), telephone number(s):

U.S. Army Corps of Engineers (USACE)
Bethany Nickison, Project Manager
P.O. Box 3755
Seattle, Washington 98124-3755
206-316-3165

2.2.2.3. Permit(s) Number(s) Date of Permit:

<u>Permit Agency</u>	<u>Number</u>	<u>Date of Issuance</u>
USACE	NWS-2017-0675	February 21, 2019

2.2.2.4. Project Name & Location: City of Marysville First Street Bypass Project (USACE Reference NWS-2017-0675) located along 1st Street from State Avenue to 47th Avenue in the City of Marysville, Washington.

2.2.2.5. Brief Description of Impact(s) to be Compensated for by the Project Mitigation Credits: The proposed project would permanently impact 0.5 acre of Wetland A and 1.8 acres of Wetland A buffer. Clearing and grubbing activities would temporarily impact 0.12 and 0.42 acres of wetland and buffer, respectively. These impacts are unavoidable after the incorporation of the minimization measures.

2.2.3. **Disclosure.** Buyer acknowledges and agrees that Credit Seller may, as part of the process for transferring the Project Mitigation Credits, disclose the information provided under Section 2.2.2 above to the permitting agency(ies) described in Section 2.2.2, the Snohomish County Auditor, and the Permitting Authorities.

2.3. ***Title/Risk of Loss***

2.3.1. **Conveyance.** Upon receipt of payment Credit Seller shall convey to Buyer the Project Mitigation Credits, free of liens, encumbrances, restrictions, rights, and conditions, except as expressly provided for herein. Conveyance shall be in the form of a letter from the Credit Seller to the Buyer and Permitting Authorities notifying them that credits have been transferred from the banks to the Buyer for the permits and projects detailed in Section 2.2.2

2.3.2. **Risk of Loss.** Credit Seller shall bear the risk of loss of the Project Mitigation Credits prior to Closing.

2.4. ***Representations and Warranties***

Credit Seller represents and warrants to Buyer that:

2.4.1. Credit Seller is authorized by the SBMB and the SHMB to sell and transfer wetland and critical area mitigation credits for permits from those banks to the Buyer.

2.5. *Closing*

2.5.1. **Closing and Closing Date.** The closing of the purchase and sale of the Project Mitigation Credits (“Closing”) shall occur when the Credit Seller receives a cashier’s check for the purchase amount, under the terms of this Agreement

2.5.2. **Limits on Closing Date.** The Closing Date shall not be modified without the written approval of Credit Seller and Buyer.

2.6. *Notice*

2.6.1. Except as may be otherwise expressly provided for herein, all notices required or permitted to be given under this Agreement shall be in writing and shall be delivered or sent: (a) in person; (b) by U.S. Mail, postage prepaid and certified with return receipt requested; or (c) by nationally recognized overnight delivery service, prepaid, and addressed as set forth below. Either party may change its address by notifying the other party in writing of the change of address. Notice shall be deemed delivered immediately, if delivered in person, or within two days if sent by any other means set forth in this Section 2.6.

2.6.2. If to Credit Seller: Mitigation Banking Services, LLC
PO BOX 354
Kirkland, WA 98033-0354

2.6.3. If to Buyer: As provided in Section 2.2.2 above.

2.7. *Miscellaneous*

2.7.1. **Effective date.** The effective date of this Agreement shall be the earliest date by which both Credit Seller and Buyer have executed this Agreement.

2.7.2. **Assignment.** Buyer’s rights under this Agreement shall not be assigned or apportioned, either voluntarily or by operation of law, without the prior written consent of Credit Seller, which shall be in Credit Seller’s reasonable discretion. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and be binding upon the Parties’ respective successors and assigns.

2.7.3. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties with respect to the purchase and sale of the Project Mitigation Credits, and supersedes and replaces any prior agreements and understandings, whether oral or written, between them with respect to said matters.

2.7.4. **Confidentiality.** The existence of this Agreement and the number of Project Mitigation Credits may be disclosed to the permitting agency(ies) described in Section 2.2.2 above and the Permitting Authorities.

2.7.5. **Time.** Time is of the essence of this Agreement.

- 2.7.6. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington.
- 2.7.7. **Amendment.** No change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced.
- 2.7.8. **Captions.** The captions of this Agreement have no effect upon its interpretation and are for convenience and ease of reference only.
- 2.7.9. **Severability.** The unenforceability, invalidity, or illegality of any provision hereof shall not render any other provision unenforceable, invalid, or illegal.
- 2.7.10. **Computation of Time.** If any date set forth in this Agreement for the delivery of any document or the happening of any event should, under the terms hereof, fall on a weekend or holiday, then such date shall be automatically extended to the next succeeding weekday that is not a holiday.
- 2.7.11. **Attorneys' Fees.** In the event either party to this Agreement finds it necessary to bring an action at law or other proceeding against the other party to enforce any of the terms, covenants, or conditions of this Agreement or any instrument executed pursuant to this Agreement, or by reason of any breach or default under this Agreement, the prevailing party in any such action or proceeding (and any appeal thereof) shall be paid all costs and reasonable attorneys' fees by the other party. This provision shall survive Closing and shall not be merged into the Bill of Sale.
- 2.7.12. **Acts Beyond Party's Control.** Neither party to this Agreement shall be in default or violation as to any obligation created hereby and no condition precedent or subsequent shall be deemed to fail to occur if such party is prevented from fulfilling such obligation by, or such condition fails to occur due to, forces beyond such party's reasonable control, including without limitation, destruction or impairment of facilities resulting from breakdown not resulting from lack of ordinary care and maintenance, flood, earthquake, slide, storm, lightning, fire, epidemic, war, riot, civil disturbance, sabotage, proceeding by court or public authority, or act or failure to act by court, public authority, or third party, which forces by exercise of due diligence and foresight such party could not reasonably have expected to avoid.
- 2.7.13. **No Joint Venture.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between Buyer and Credit Seller. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization, or corporation not a party to this Agreement, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder.
- 2.7.14. **Counterparts/Faxes.** This Agreement may be executed in one or more counterparts with like effect as if all signatures appeared on one copy. Facsimile

transmission of any signed original document (other than the Bill of Sale), and retransmission of any signed facsimile transmission shall be the same as delivery of an original. At the request of either party or the Escrow Agent, the Parties shall confirm facsimile transmitted signatures by signing an original document.

The Parties have executed this Agreement as of the dates set forth below.

“MBS” OR “CREDIT SELLER”
MITIGATION BANKING SERVICES, LLC, Credit Seller

By _____ Date _____

[print name and title]

“BUYER”

By _____ Date _____

[print name and title]

