APPROVED JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

This document should be completed by following the instructions provided in Section IV of the JD Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): March 18, 2013

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Portland District, Nike West Field Site, NWP-2013-42

C. PROJECT LOCATION AND BACKGROUND INFORMATION:
State: Oregon County/parish/borough: Washington Co. City: Beaverton
Center coordinates of site (lat/long in degree decimal format): Lat. 45.508362° **N**, Long. 122.83180° **W**.
Universal Transverse Mercator:
Name of nearest waterbody: Cedar Mill Creek
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Tualatin River
Name of watershed or Hydrologic Unit Code (HUC): HUC 12 - 170900100401, Beaverton Creek sub-watershed
☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc…) are associated with this action and are recorded on a different JD document.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):
☒ Office (Desk) Determination. Date: 29 January and 14, 25 February 2013
☒ Field Determination. Date(s): 1 February 2013

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "*navigable waters of the U.S.*" within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [*Required*]
☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "*waters of the U.S.*" within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [*Required*]

1. **Waters of the U.S.**
   a. **Indicate presence of waters of U.S. in review area (check all that apply):** [1]
   ☐ TNWs, including territorial seas
   ☐ Wetlands adjacent to TNWs
   ☐ Relatively permanent waters[2] (RPWs) that flow directly or indirectly into TNWs
   ☐ Non-RPWs that flow directly or indirectly into TNWs
   ☒ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
   ☒ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
   ☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
   ☐ Impoundments of jurisdictional waters
   ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

   b. **Identify (estimate) size of waters of the U.S. in the review area:**
   Non-wetland waters: linear feet: width (ft) and/or acres.
   Wetlands: 1.261 acres.

   c. **Limits (boundaries) of jurisdiction** based on: **1987 Delineation Manual**
   Elevation of established OHWM (if known): .

2. **Non-regulated waters/wetlands (check if applicable):**[3]
   ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
   Explain: **Areas 1 (~0.83 acre) and 2 (~0.02 acre) are located southeast, and outside, of the study area and are not addressed in this form.**

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[1] Boxes checked below shall be supported by completing the appropriate sections in Section III below.
[2] For purposes of this document, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).
[3] Supporting documentation is presented in Section III.F.

Areas 4 (0.041 acre), 5 (0.027 acre), 6 (0.122 acre), 7 (0.098 acre), and 11 (0.024 acre) are man-made linear features, but met wetland criteria with disturbed soils. The ditches are remnant features from the presence of industrial park railroad lines in the 1980s. Area 11 is connected to Area 8 with a culvert under SW Jay Street. These man-made wetland features do not have continuous hydrological surface connections to Cedar Mills Creek, do not drain waters of the U.S., and were created from uplands. Additionally, at the southwest terminus of Area 6, a grassy roadside swale is present on the north side of SW Jenkins Road. The roadside swale does not have a continuous OHWM, likely does not meet wetland criteria, and only conveys stormwater down slope in response to sustained precipitation. The grassy swale terminates into wetlands (offsite Area 1) abutting Cedar Mills Creek. Area 7 has intermittent, overland sheet flow into Area 12, but only in response to sustained precipitation and they are not contiguous. Neither the grassy swale nor the Area 7 sheet flow provide a continuous seasonal (~3+ months) hydrological connection to the creek or its abutting wetlands. Therefore these five linear wetlands are not jurisdictional.

Areas 8 (0.271 acre) and 10 (0.085 acre) are slope PEM wetlands that do not have a hydrologic surface connection to Cedar Mills Creek and are not adjacent to the creek because there are other adjacent wetlands that are closer to the creek. The two wetlands (8 and 10) are at least 850 feet outside of the 100-year floodplain of the Cedar Mills Creek, at least 1,150 feet from the creek, and are at least 16 feet above the 100-year floodplain elevation. Wetlands (Areas 9 and 12) abutting Cedar Mills Creek are between these two wetlands (8 and 10) and the creek. Additionally, there is an adjacent wetland onsite, Area 3 (0.519 acre), between them and the creek and it is jurisdictional status is discussed below. Therefore, Areas 8 and 10 are not adjacent to the creek and are not jurisdictional.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW
Identify TNW: **Tualatin River**.

Summarize rationale supporting determination: The Tualatin River is listed on the Portland District list of Navigable Waterways in Oregon. Cedar Mills Creek (an RPW) flows southwest from the site area for ~4,000 feet and into Beaverton Creek (an RPW), which eventually flows into the Tualatin River (a TNW) via Rock Creek (an RPW).

2. Wetland adjacent to TNW
Summarize rationale supporting conclusion that wetland is "adjacent": N/A.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody[4] is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:
Watershed size: 24,174**acres**
Drainage area: 7.9 **square miles**
Average annual rainfall: ~34 inches
Average annual snowfall: <2 inches

(ii) Physical Characteristics:
(a) Relationship with TNW:
☐ Tributary flows directly into TNW.
☒ Tributary flows through **3** tributaries before entering TNW.

Project waters are **5-10** river miles from TNW.
Project waters are **1 (or less)** river miles from RPW.
Project waters are **5-10** aerial (straight) miles from TNW.
Project waters are **1 (or less)** aerial (straight) miles from RPW.
Project waters cross or serve as state boundaries. Explain: N/A.

[4] Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW[5]: Cedar Mills Creek (an RPW) flows southwest from the site area for ~4,000 feet and into Beaverton Creek (an RPW), which eventually flows into the Tualatin River (a TNW) via Rock Creek (an RPW). Cedar Mills Creek is outside the study area.
Tributary stream order, if known: Unkown.

(b) General Tributary Characteristics (check all that apply):
Tributary is: ☒ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: Cedar Mills Creek upstream of the site has been straighten and then renaturalized, but is generall manipulated by the urban setting and past restoration work.

Tributary properties with respect to top of bank (estimate):
Average width: <20 feet
Average depth: <6 feet
Average side slopes: **4:1 (or greater).**

Primary tributary substrate composition (check all that apply):
☒ Silts ☒ Sands ☐ Concrete
☒ Cobbles ☒ Gravel ☐ Muck
☐ Bedrock ☐ Vegetation. Type/% cover:
☒ Other. Explain: Urbanized.

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: urbanized and restored.
Presence of run/riffle/pool complexes. Explain: N/A.
Tributary geometry: **Relatively straight**
Tributary gradient (approximate average slope): 1 %

(c) Flow:
Tributary provides for: **Pick List**
Estimate average number of flow events in review area/year: **Pick List**
Describe flow regime: .
Other information on duration and volume: Cedar Mills Creek is a perennial stream.

Surface flow is: **Discrete and confined.** Characteristics: Cedar Mills Creek is a perennial stream.

Subsurface flow: **Unknown**. Explain findings: .
☐ Dye (or other) test performed: .

Tributary has (check all that apply):
☒ Bed and banks
☒ OHWM[6] (check all indicators that apply):
☒ clear, natural line impressed on the bank
☒ changes in the character of soil
☒ shelving
☒ vegetation matted down, bent, or absent
☒ leaf litter disturbed or washed away
☒ sediment deposition
☒ water staining
☐ other (list):
☒ the presence of litter and debris
☒ destruction of terrestrial vegetation
☒ the presence of wrack line
☒ sediment sorting
☒ scour
☒ multiple observed or predicted flow events
☒ abrupt change in plant community
☐ Discontinuous OHWM.[7] Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):
☐ High Tide Line indicated by:
☐ oil or scum line along shore objects
☐ fine shell or debris deposits (foreshore)
☐ physical markings/characteristics
☐ tidal gauges
☐ other (list):
☐ Mean High Water Mark indicated by:
☐ survey to available datum;
☐ physical markings;
☐ vegetation lines/changes in vegetation types.

(iii) Chemical Characteristics:

[5] Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.
[6] A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.
[7] Ibid.

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).
Explain: Creek waters are typical of an urbanized stream that receives treated and untreated runoff from impervious landscapes.
Identify specific pollutants, if known: .

(iv) Biological Characteristics. Channel supports (check all that apply):
☒ Riparian corridor. Characteristics (type, average width): Discontinuous but averages 100' due to the urban setting.
☒ Wetland fringe. Characteristics: abutting fringe wetlands are typical along its entire legnth.
☒ Habitat for:
☒ Federally Listed species. Explain findings: The stream is a direct tributary to ESA-occupied waters (Beaverton Creek, UWR steelhead).
☒ Fish/spawn areas. Explain findings: small native and non-native utilize Cedar Mills Creek year round.
☒ Other environmentally-sensitive species. Explain findings: There is at least one compenatory wetland mitigation site that is abutting Cedar Mills Creek.
☒ Aquatic/wildlife diversity. Explain findings: Cedar Mills Creek is utilized by many native and non-native widlife, including birds, small mammals, fish, amphibians, and reptiles.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:
(a) General Wetland Characteristics:
Properties:
Wetland size: Area 3 is 0.519 acres, Area 9 is 0.619 acres, and Area 12 is 0.123. They total 1.261 acres
Wetland type. Explain: PEM, slope.
Wetland quality. Explain: Areas 3, 9, and 12 are routinuely mowed annually to reduce fire hazard and to prevent woody growth. The eastern portion of Area 12, that extends offsite, is not mowed.
Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:
Flow is: **Pick List**. Explain: .

Surface flow is**: Pick List**
Characteristics: .

Subsurface flow: **Pick List**. Explain findings: .
☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:
☒ Directly abutting
☒ Not directly abutting
☒ Discrete wetland hydrologic connection. Explain: Area 9 has a direct hydrologic connection to the creek through a man-made stormwater treatment system, which includes an off-site wetland stormwater treatement swale and a ~645-foot long, conveyance pipe to a creekoutfall. A six-inch diameter, ~8-foot long PVC pipe connects Area 9 to the stormwater swale. The stormwater swale receives runoff from upland parking areas, Jay Street, and Area 9 throughout the wet winter and spring months (Nov. - May). Area 12 is directly abutting the creek as it continues east offsite, and it is likley contiguous with Area 1, an offsite abutting wetland to the creek.
☒ Ecological connection. Explain: During the late fall through early spring, Area 9 contributes hydrology to the creek through the stormwater swale. Areas 3 and 9 provide emergent wetland habitat at the top of bank, near the lateral extent of the creek's 100-year floodplain. Wetlands in this landscape position provide seasonal wildlife habitat, inflitrate surface hydrology, and are sites of chemical or physical wetland processes that provide a reasonable ecological connection with the creek and its other adjacent wetlands. Areas 3 and 9 are less than 100 feet from other wetlands (i.e. Areas 1 and 12) abutting the creek. A distance of 100 feet is within the daily activtiy capabailities of some aquatic amphibians, such as salamanders, newts, and frogs.
☒ Separated by berm/barrier. Explain: Only Area 3 is seperated from from the creek and its abutting wetlands. Area 3 is seperated from a nearby, down slope wetland by less than 100 feet of uplands, that consist of riparian upland vegetation. Area 3 (0.519 acre) continues southeast offsite, but is not hydrologically connected or contiguous with any wetlands that are abutting Cedar Mills Creek. The southeast portion of Area 3 is within the floodplain of the creek and less than 100 feet from offsite wetlands (Area 1) that abut the creek. Area 3 is approximately 400 feet from the creek.

(d) Proximity (Relationship) to TNW
Project wetlands are **5-10** river miles from TNW.
Project waters are **5-10** aerial (straight) miles from TNW.
Flow is from: **Wetland to navigable waters.**
Estimate approximate location of wetland as within the **50 - 100-year** floodplain.

(ii) Chemical Characteristics:

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: The wetlands are degraded due to the maintenance regime of the site and past industrial (railroad) uses on the proprerty.

Identify specific pollutants, if known: None are known at this time.

(iii) Biological Characteristics. Wetland supports (check all that apply):

☒ Riparian buffer. Characteristics (type, average width): The creek's riparian buffer near the site is ~425' wide on the west side and ~340' on the east side. It is dominated by reeed canary grass with scattered samplings of willows, oaks, and dogwoods. Few large trees are located at the upper edge of the riparian edge.

☒ Vegetation type/percent cover. Explain: See the wetland delienation report.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: Some native and non-native fish species spawn and/or rear in the lower riparian wetlands when they are submerged during the winter and spring season.

☒ Other environmentally-sensitive species. Explain findings: Aquatic and semi-aqutic species of amphibians and reptiles utilize the riparian area throughout the year.

☒ Aquatic/wildlife diversity. Explain findings: The ripariain and wetlands areas abutting the creek provide nesting, foraging, resting, and roosting habitat for several birds species, including migratory birds, waterfowl, hawks, and resident wetland birds typical of urban settings near large wooded areas and confluences of waterways. The site is immediately north of the Tualatin Hills Nature Park and upland wooded lots.

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **14**

Approximately (11+) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)	Size (in acres)	Directly abuts? (Y/N)	Size (in acres)
Area 3, No	0.519	Area 9, Yes	0.619
Area 12, Yes	0.123	Area 2, No	0.022

10 other abutting wetlands (see the LWI amp) along Cedar Mills Creek, totaling ~10+ acres

Summarize overall biological, chemical and physical functions being performed: These 14 wetlands, totaling over 11 acres, along Cedar Mill Creek from its confluence with Beaverton Creek to the intersection of SW Walker Road at SW Murray Blvd, provide many aquatic functions. Physical functions include flood plain storage, flood plain detention, sediment retention, wildlife habitat structure, shading of the waterway, and recharge of shallow groundwater. Chemical functions include buffering pH, removing contaminates, soil oxidation, supply nutrients, and photosynthesis. Biological functions include primary production, fish and wildlife habitat for breeding, foraging, shelter, and migration.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: .

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: Area 3 is adjacent, but not directly abutting Cedar Mills Creek, the RPW. When considering Area 3 with all the other adjacent wetlands along the creek, the abutting wetlands along creek (total >11 acres), and the ~9,000 linear feet of the perenial creek, there is a more than reasonable ecological connection between the biological, physical, and chemicals functions that this subwatershed and its adjacent wetlands provide to the aquatic fucntions of the Tualatin River (TNW). Specifically, the subwatershed pollutants can be carried downstream to the TNW through the creek, the pollutants can be reduced by the adjacent wetlands, the creek and wetlands provide aquatic habitats for vertebrates and invertbrates,the subwatershed is part of the food web for the TNW organisms, the wetlands and creek provide nutrients and organic carbon to the Tualatin River, and they contribute to the health of aquatic habitat parameters for ESA-listed fish in the Tualatin River and it's tributaries.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
   - ☐ TNWs: linear feet width (ft), Or, acres.
   - ☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**
   - ☒ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: Cedar Mills Creek is a perenial waterway, but it is located outside the study area.
   - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: .

   Provide estimates for jurisdictional waters in the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: .

3. **Non-RPWs[8] that flow directly or indirectly into TNWs.**
   - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional waters within the review area (check all that apply):
   - ☐ Tributary waters: linear feet width (ft).
   - ☐ Other non-wetland waters: acres.
     Identify type(s) of waters: **.**

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
     - ☒ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: **Areas 9 and 12 directly abut Cedar Mills Creek as discussed in III.B.2 above.**
     - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.742** acres.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
   - ☒ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisidictional. Data supporting this conclusion is provided at Section III.C.

   Provide acreage estimates for jurisdictional wetlands in the review area: **0.519** acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
   - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

   Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.[9]**
   As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.
   - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
   - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or

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[8] See Footnote # 3.
[9] To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):[10]

☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):
☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: **.**
☐ Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☒ Prior to the Jan 2001 Supreme Court decision in "*SWANCC*," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
☒ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: **Areas 8 (0.271 ac) and 10 (0.085 ac) are more than 1,000 feet from the creek's 100-year floodplain, are more than 16 feet above the upper edge of the floodplain, and do not have a hydrological surface connection to the creek or its abutting wetlands. These wetlands are seperated from the creek by other adjacent wetlands (i.e. Areas 2 and 3), abutting wetlands (i.e. Areas 1, 9, 12), and other uplands.**
☒ Other: (explain, if not covered above): **Areas 4 (0.041 acre), 5 (0.027 acre), 6 (0.122 acre), 7 (0.098 acre), and 11 (0.024 acre) are man-made linear features, but met wetland criteria with disturbed soils. The ditches are remnant features from the presence of industrial park railroad lines in the 1980s. Area 11 is connected to Area 8 with a culvert under SW Jay Street. These man-made wetland features do not have continuous hydrological surface connections to Cedar Mills Creek, do not drain waters of the U.S., and were created from uplands. Additionally, at the southwest terminus of Area 6, a grassy roadside swale is present on the north side of SW Jenkins Road. The roadside swale does not have a continuous OHWM, likely does not meet wetland criteria, and only conveys stormwater down slope in response to sustained precipitation. The grassy swale terminates into wetlands (offsite Area 1) abutting Cedar Mills Creek. Area 7 has intermittent, overland sheet flow into Area 12, but only in response to sustained precipitation and they are not contiguous. Neither the grassy swale nor the Area 7 sheet flow provide a continuous seasonal (~3+ months) hydrological connection to the creek or its abutting wetlands. Therefore these five linear wetlands are not jurisdictional.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 0.356 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):
☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 0.356 acres.

SECTION IV: DATA SOURCES.

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[10] Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA *Memorandum Regarding CWA Act Jurisdiction Following Rapanos.*

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: January 24, 2013 Nike "West Field" Washington County, Oregon wetland delineation report; revised wetland/upland data forms and wetland maps provided on Feb. 8, 11, and 12, 2013; Stormwater treatment map provided on Feb. 21, 2013.

☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
- ☒ Office concurs with data sheets/delineation report.
- ☐ Office does not concur with data sheets/delineation report.

☐ Data sheets prepared by the Corps: .

☒ Corps navigable waters' study: Portland District 1993 list of navigable waters in Oregon.

☒ U.S. Geological Survey Hydrologic Atlas: .
- ☒ USGS NHD data.
- ☐ USGS 8 and 12 digit HUC maps.

☒ U.S. Geological Survey map(s). Cite scale & quad name: Linnton, OR 24K quad.

☒ USDA Natural Resources Conservation Service Soil Survey. Citation:Websoil survey (NRCS).

☒ National wetlands inventory map(s). Cite name: eGIS USWFS layer.

☒ State/Local wetland inventory map(s): City of Beaverton, March 7, 2000 by Shapiro and Associates, Inc.

☒ FEMA/FIRM maps: .

☒ 100-year Floodplain Elevation is:~183' (National Geodectic Vertical Datum of 1929)

☒ Photographs: ☒ Aerial (Name & Date): Google Earth (1990, 1995, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 02010, 2011, 2012), 2004 IR, Black and White (1970, 1980, 1990).
or ☒ Other (Name & Date): April 30, 1976 Burlington Northern Windolph Industrial Park land survey (Robert E. Meyers Engineers Inc.).

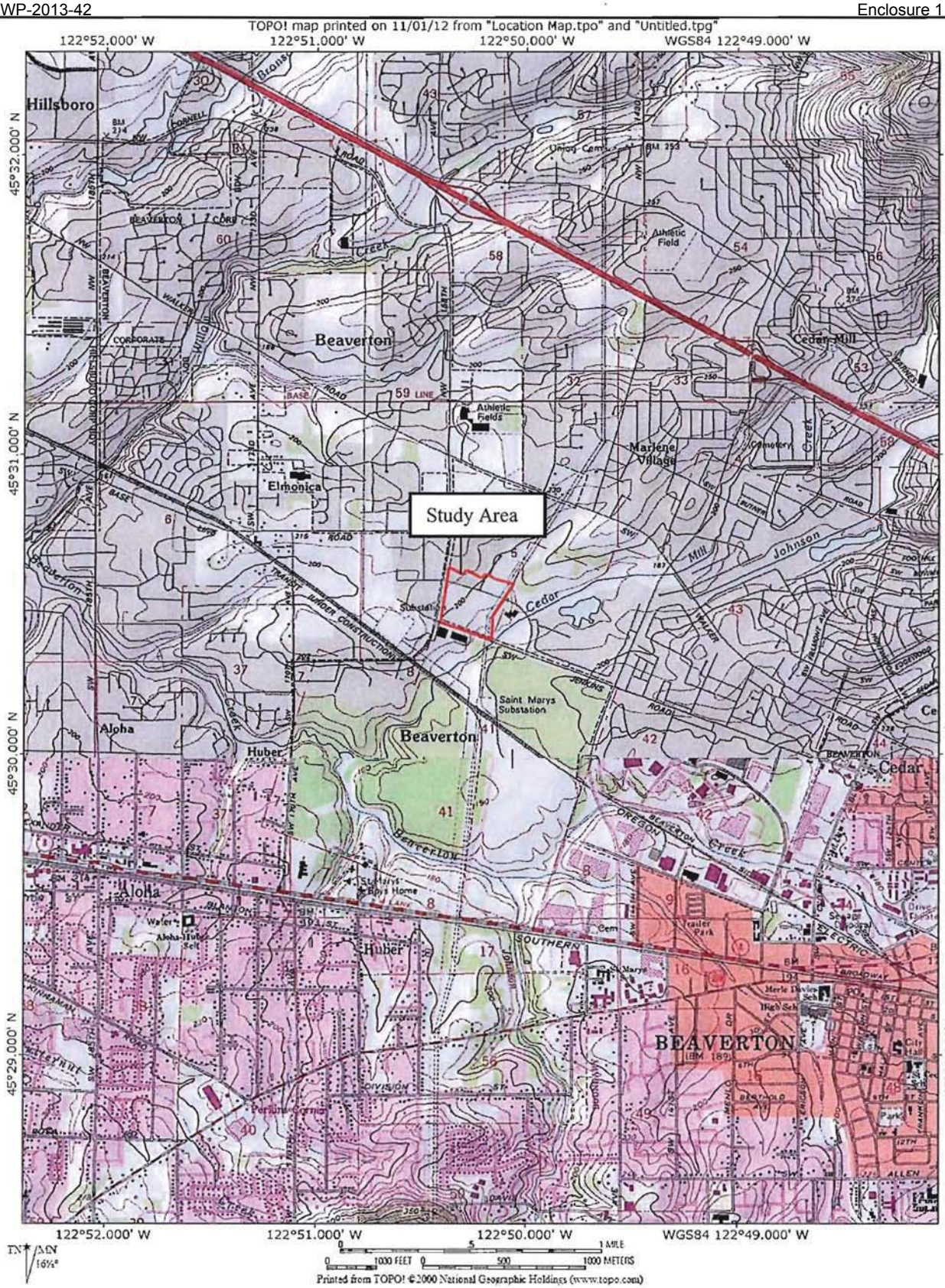
☐ Previous determination(s). File no. and date of response letter: .

☐ Applicable/supporting case law: .

☐ Applicable/supporting scientific literature: .

☒ Other information (please specify): Wetland Delineation verificaiton site visit on February 1, 2013.

B. ADDITIONAL COMMENTS TO SUPPORT JD: .



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Location Map

Nike "West Field", Washington County, Oregon

Figure

1

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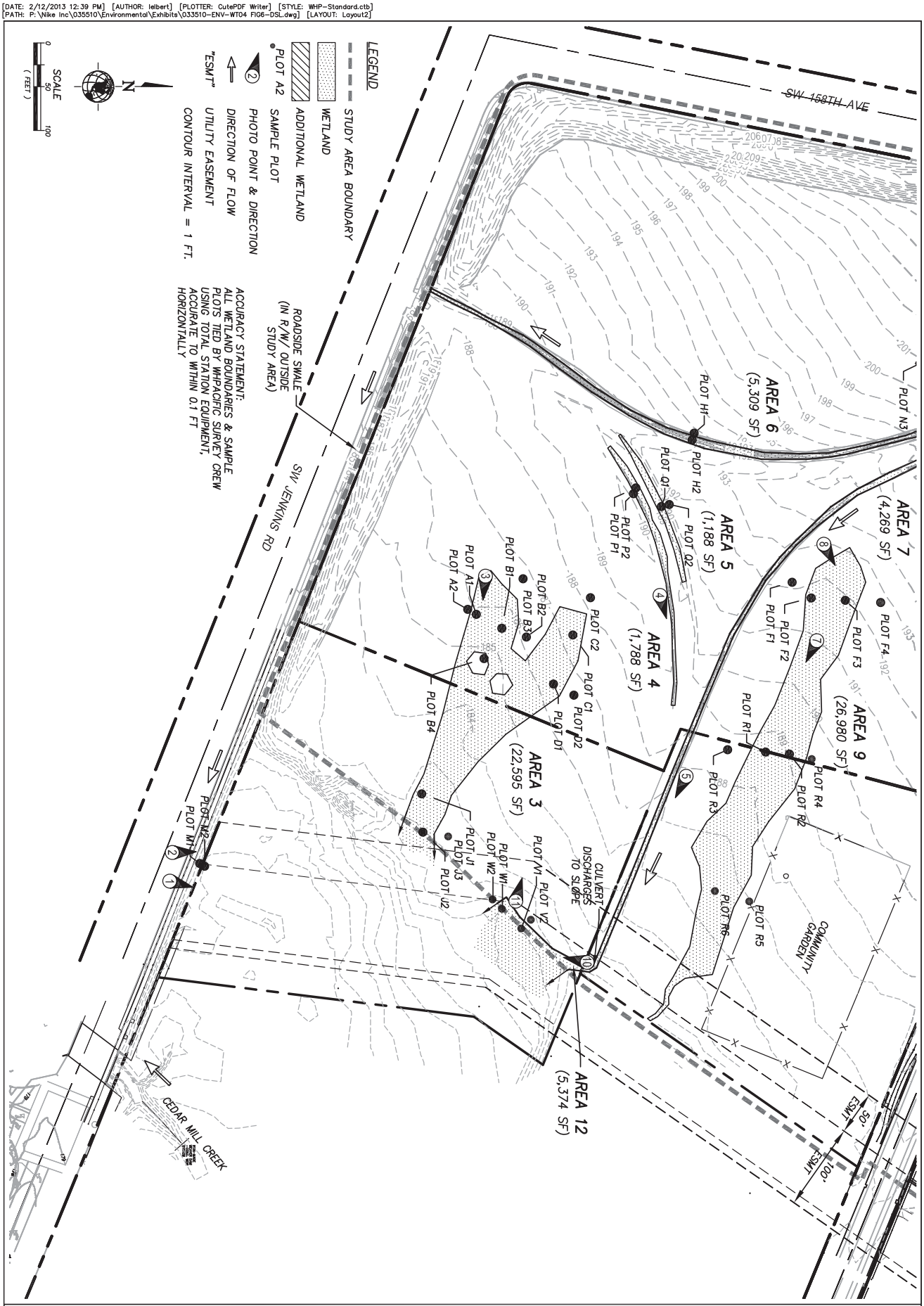

SHEET NUMBER 2 2 of 3	FIGURE 6 - WETLAND MAP NIKE INC NIKE "WEST FIELD" WASHINGTON COUNTY, OREGON		
PROJECT NUMBER 033510	DRAWING FILE NAME 033510-ENV-WT04 FIG6-DSL	SCALE AS SHOWN	

SHEET INFO	
DESIGNED	—
DRAWN	RAI
CHECKED	PJQ
APPROVED	—
LAST EDIT	2/12/2013
PLOT DATE	2/12/2013
SUBMITTAL	

REVISIONS			
NO.	BY	DATE	REMARKS
1	SRM	2/11/13	DSL-STUDY AREA

WHPacific

[DATE: 2/12/2013 12:42 PM] [AUTHOR: leibert] [PLOTTER: CutePDF Writer] [STYLE: WHP-Standard.ctb]
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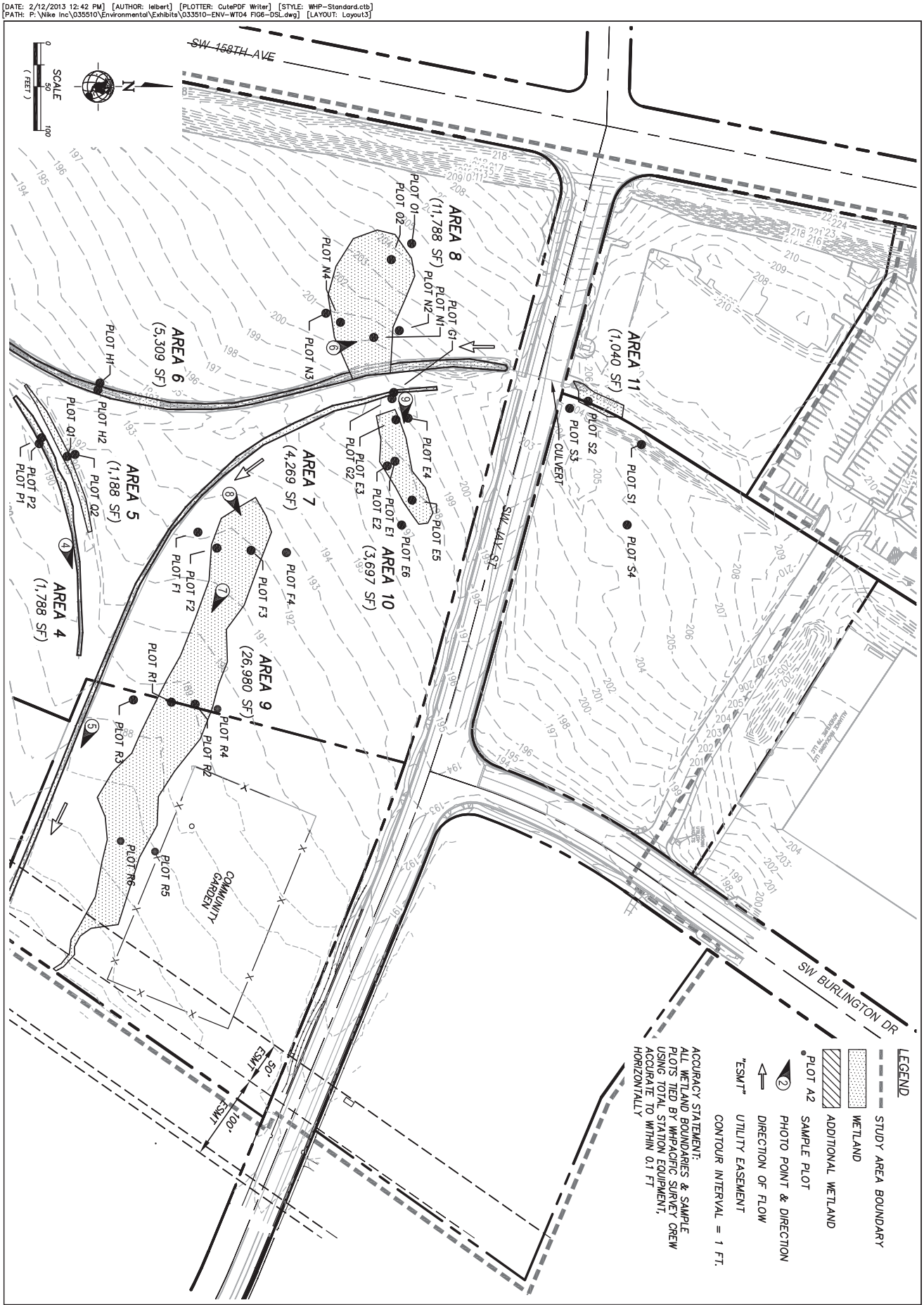

FIGURE 6 - WETLAND MAP

NIKE INC
NIKE "WEST FIELD" WASHINGTON COUNTY, OREGON

PROJECT NUMBER	DRAWING FILE NAME	SCALE
033510	033510-ENV-WT04 FIG6-DSL	AS SHOWN

SHEET NUMBER 3 3 of 3

SHEET INFO	
DESIGNED	—
DRAWN	RAI
CHECKED	PJQ
APPROVED	—
LAST EDIT	2/12/2013
PLOT DATE	2/12/2013
SUBMITTAL	

REVISIONS			
NO.	BY	DATE	REMARKS
1	SRM	2/11/13	DSL-STUDY AREA

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