

**US Army Corps
of Engineers**
Portland District

PUBLIC NOTICE of PROPOSED ADMINISTRATIVE PENALTY

Issue Date: March 15, 2002

Expiration Date: April 15, 2002

30 Day Notice

Corps of Engineers Action ID: 1999-00449

1. INTERESTED PARTIES: The District Engineer, Portland District, proposes to issue an order assessing a Class 1 Administrative Penalty against the Clackamas County Department of Transportation and Development for violation of a permit granted under the Clean Water Act.

2. PERMIT INVOLVED AND ALLEGED VIOLATION: A Department of the Army Individual Permit (No. 1999-00449) was issued to the Clackamas County Department of Transportation and Development on April 20, 2000. The permit authorized the discharge of fill material into several wetlands and streams adjacent to Mt. Scott Creek in conjunction with the construction of the "Sunnybrook Extension." (The Sunnybrook Extension is the 0.7-mile extension of Sunnybrook Road from a proposed Oregon Department of Transportation Interchange at I-205 to Sunnyside Road near 108th Avenue.)

The permit was violated as follows:

Regarding the construction of a bridge over the intermittent drainage referred to in the permit application as Wetland E: The application and permit stated that the bridge footings would be constructed in upland areas only and that there would be no wetland impacts associated with their construction or operation, i.e., the permit did not authorize the discharge of fill material into areas within the jurisdiction of the Corps of Engineers at that location. Inspection revealed that fill material had been placed in this drainage to construct a culverted construction road crossing.

Regarding the construction of a bridge over the intermittent drainage referred to in the permit application as Wetland G: The application and permit stated that the bridge footings would be constructed in upland areas only and that there would be no wetland impacts associated with their construction or operation, i.e., the permit did not authorize the discharge of fill material into areas within the jurisdiction of the Corps of Engineers at that location. Inspection revealed that rock and gravel had been placed in the stream to construct a construction road crossing.

Regarding the intermittent stream referred to in the permit application as "Wetland H," the permit authorized the realignment and lining with rock of 60 linear feet of that stream, and the construction of check dams of rock and woody debris to reduce the erosion potential of that

stream. Inspection revealed that approximately 250 feet of the stream was moved into a constructed channel lined with rock.

Regarding the construction of a new bridge at the realignment of 97th Avenue over Mt. Scott Creek: The application and permit stated that the footings of the bridge would be constructed in uplands only, and that there would be no wetland impacts associated with their construction or operation, i.e., the permit did not authorize the discharge of fill material into areas within the jurisdiction of the Corps of Engineers at that location. Inspection and analysis revealed that a portion of the south abutment of the bridge was constructed within the area subject to the Corps' jurisdiction.

3. AUTHORITY FOR PROCEEDING: This Administrative Penalty proceeding is initiated under the authority of 33 U.S.C. § 1319(g) and 33 CFR Part 326.6. The procedure for assessing civil penalties in cases such as this is set out in the statute and the regulation. Following the discovery and investigation of a violation of a permit, notice is given to the permittee, the appropriate state agency, and the public. The permittee, the state, or any member of the public may file comments within 30 days. If requested by the permittee, a hearing will be held before a Presiding Officer who will submit a report and recommend a decision to the District Engineer. The District Engineer will issue a Final Order on the case to the permittee. Public participation in the hearing is permitted if a hearing is held.

4. PENALTY PROPOSED: The amount of the penalty proposed in this case is \$25,000. However, this proposal is subject to revision in the interests of justice after all evidence and comments have been received and reviewed. The amount of the penalty that the District Engineer is authorized to assess as a Class 1 Penalty is \$10,000 per violation and not more than \$25,000 total. In a case involving multiple violators, each violator is subject to a separate, not joint penalty.

5. REQUEST FOR HEARING: The permittee has 30 days following receipt of this formal notice of proposed penalty to request a hearing. Written request, by the permittee, for a hearing should be directed to the District Engineer within this designated comment period and must state the specific reasons for requesting a public hearing. The request should specify, in summary form, the factual and legal issues in dispute and the specific grounds for defense. The permittee has a right to present evidence at the hearing; however, he may not challenge the permit condition(s) or limitation(s) which is the subject matter of this order.

6. COMMENTS/ADMINISTRATIVE RECORD: During the 30-day comment period, any person may submit written comments on the proposed Penalty Order. These comments should be sent to the District Engineer within this designated comment period. Any submitted comments will be included in the administrative record relating to the Proposed Order. All information submitted by the permittee and persons commenting on the Proposed Order will be placed in the administrative record, which will be available for inspection during regular business hours at the U.S. Army Corps of Engineers, Portland District, Regulatory Branch, 333 SW First

Street, Portland Oregon. (The administrative record is subject to the provisions of law restricting the disclosure of confidential information.) Comments should be directed to:

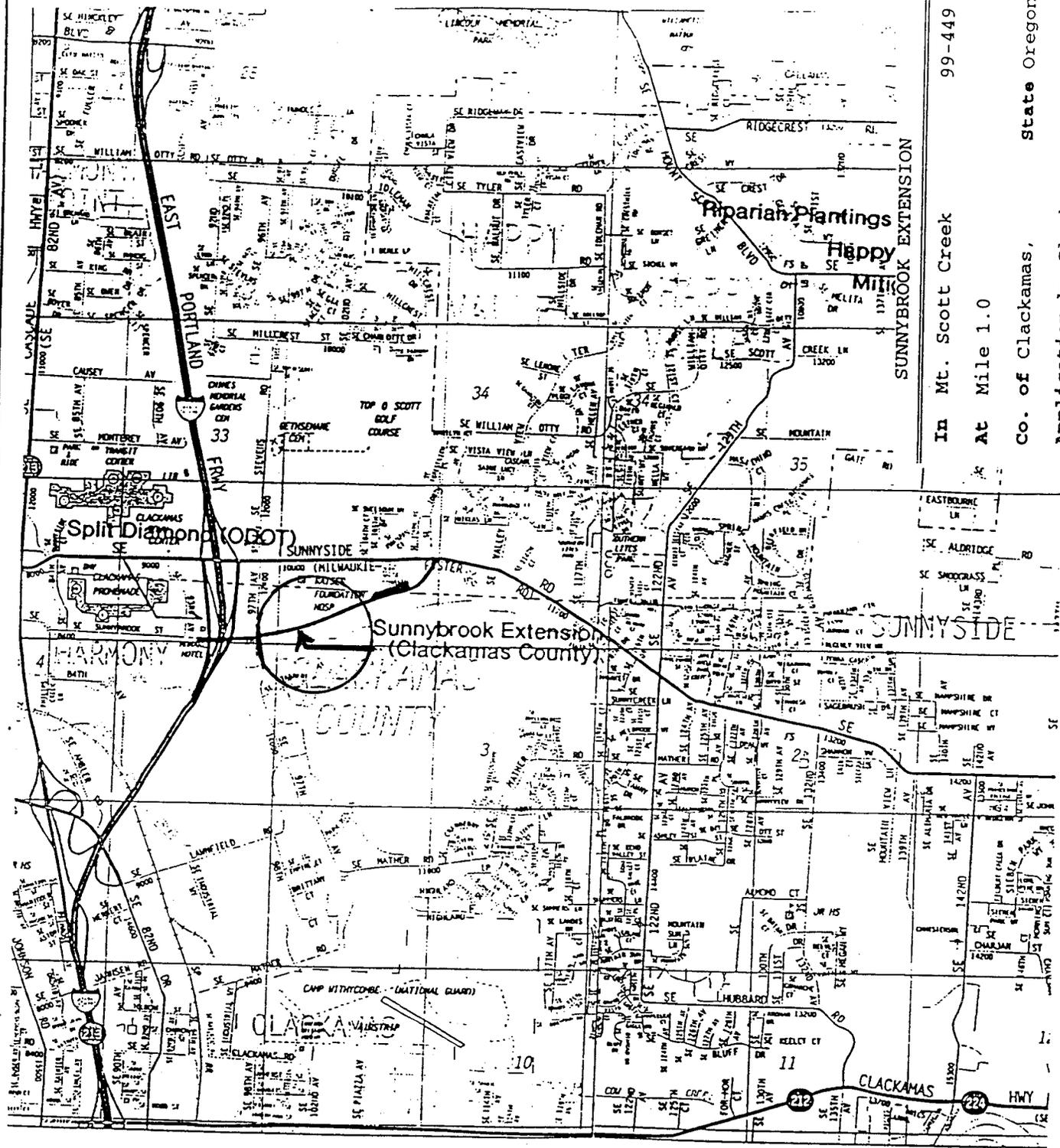
U.S. Army Corps of Engineers
ATTN: Robert Rose (CENWP-OP-G)
P.O. Box 2946
Portland, Oregon 97208-2946

7. PUBLIC HEARING: The permittee and all persons who file comments will be given notice of any hearing held on this case. The permittee and all commenters will have a reasonable opportunity to be heard and to present evidence at such hearing, if a hearing is held.

8. FINAL DECISION: If the permittee does not request a hearing, the District Engineer may issue the Final Order on this violation on or after 30 days following receipt of this formal notice by the permittee.

9. POST DECISION HEARING/APPEAL: Any Final Order issued under these procedures shall become effective 30 calendar days following its issuance unless (1) a petition to set aside the order and to hold a hearing is filed by any person who commented on the Proposed Order and the petition is granted, or (2) an appeal to the United States District Court is taken under 33 U.S.C. § 1319(g)(8).


Randall J. Butler
Colonel, Corps of Engineers
District Engineer

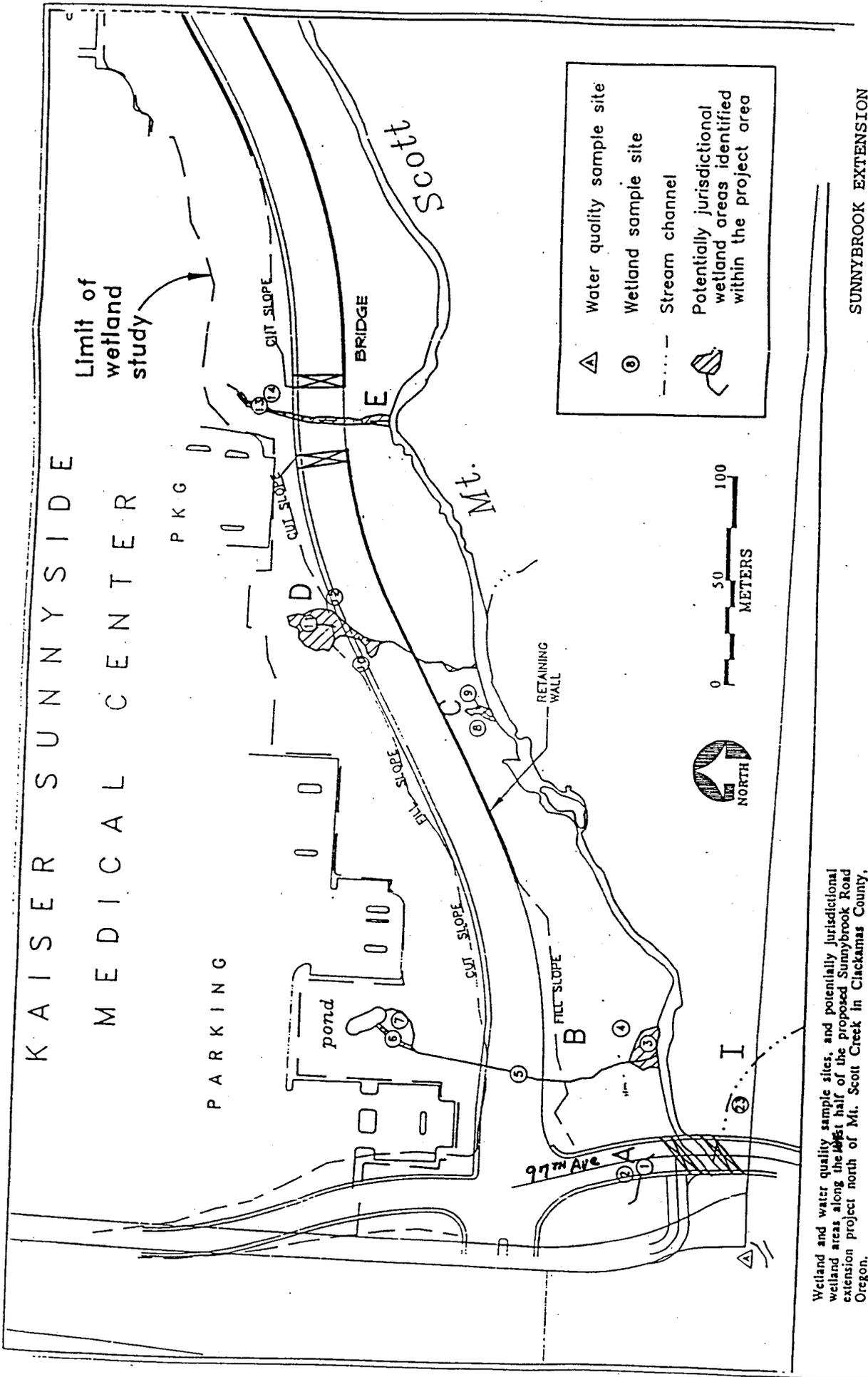


99-449
 In Mt. Scott Creek
 At Mile 1.0
 Co. of Clackamas, State Oregon
 Application by Clackamas Co.
 Date April 1999

VICINITY MAP

Sunnybrook Extension
 Clackamas County Dept. of Transportation and Development
 Clackamas County, Oregon

KAISER SUNNYSIDE MEDICAL CENTER



Wetland and water quality sample sites, and potentially jurisdictional wetland areas along the west half of the proposed Sunnybrook Road extension project north of Mt. Scott Creek in Clackamas County, Oregon.

SUNNYBROOK EXTENSION

In Mt. Scott Creek

At Mile 1.0

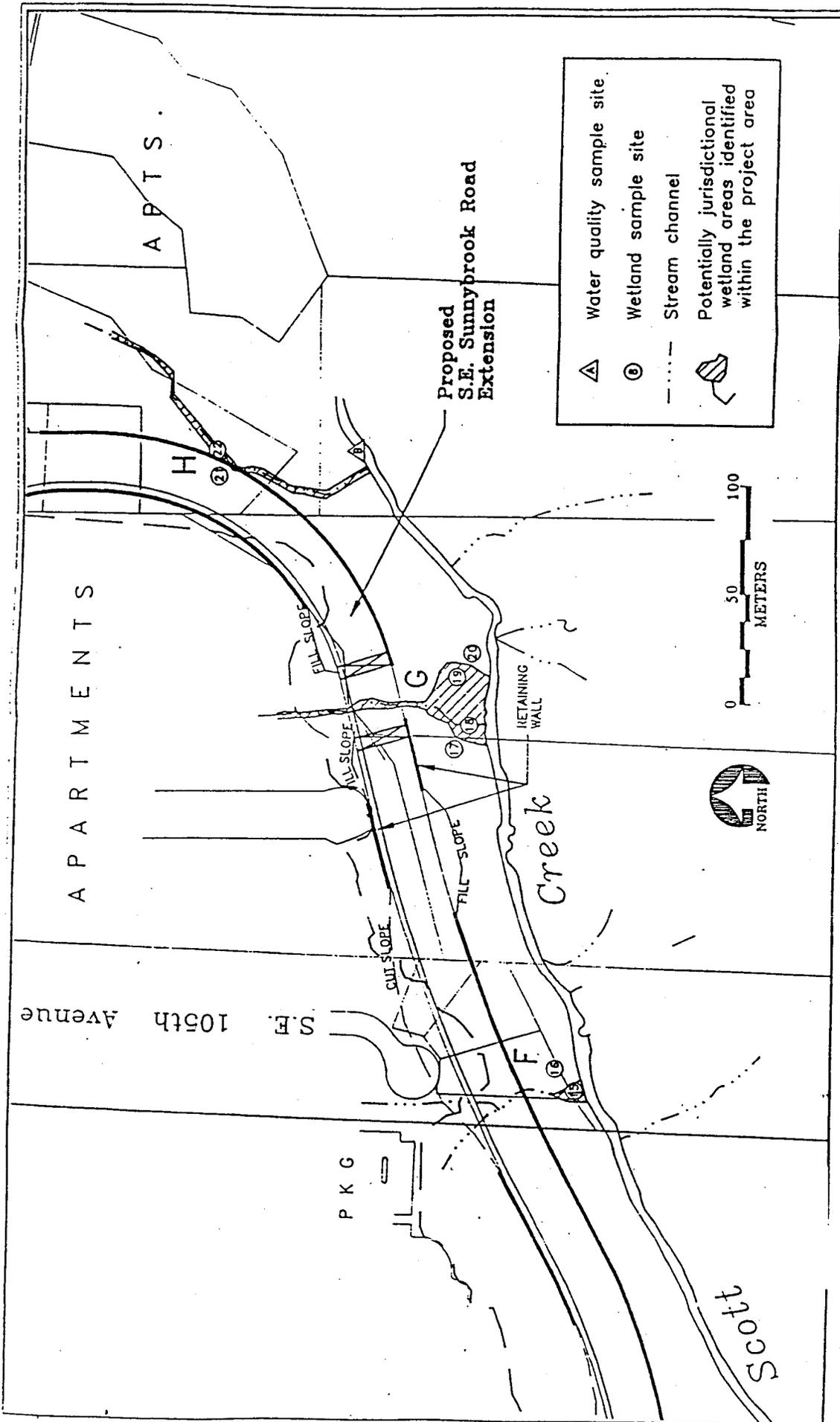
Co. of Clackamas, State Oregon

Application by Clackamas Co.

Date April 1999

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99-449



Wetland and water quality sample sites, and potentially jurisdictional wetland areas along the north half of the proposed Sunnybrook Road extension project north of Mt. Scott Creek in Clackamas County, Oregon.

SUNNYBROOK EXTENSION

In Mt. Scott Creek 99-449
 At Mile 2.6 to 3.5
 Co. of Clackamas, State Oregon
 Application by Clackamas Co.
 Date April 1999 Sheet 3 of 3