



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
2488 E 81st Street
Tulsa, OK 74137

SWT-2022-565
Public Notice No.

March 28, 2024
Public Notice Date

April 28, 2024
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

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DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, TULSA DISTRICT
2488 EAST 81ST STREET
TULSA, OKLAHOMA 74137-4290

Application No. SWT-2022-565

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS
AND
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
(30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act (CWA). The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

Applicant: Mr. Larry Pannell
City of Perry, Oklahoma
622 Cedar
Perry, OK 73077

Agent: Ms. Melissa Jones
Natural Resources Conservation Service (NRCS)
100 USDA Drive, Suite 206
Stillwater, OK 74074

Location: The proposed project is in Section 31, Township 21 North, Range 1 West, near City of Perry, Noble County, Oklahoma. The project site can be found on the Perry, Oklahoma 7.5 Minute USGS Quadrangle map at North Latitude 36.2510 and West Longitude 97.3353.

Project Description: The application is for the rehabilitation of the Upper Black Bear Creek No. 62 (Lake Perry) reservoir to address flood safety criteria and performance standards for high hazard potential class (c) dams as defined by the NRCS and state of Oklahoma. The dam was recently elevated from significant hazard class (b) to high hazard class (c) due to increased development and roadways downstream which would be inundated by a catastrophic dam failure event. The proposal includes the rehabilitation of the principal and auxiliary spillway structures, maintenance to the existing riprap covering the earthen dam, as well as other elements which do not require a Section 404 Permit. As a result of this work, the current normal operational elevation (conservation pool) of the lake would be raised by approximately 2.1 feet to accommodate additional water supply storage for the City of Perry.

Purpose: The overall purpose of this work is to bring Lake Perry into compliance with current NRCS and Oklahoma safety performance standards for a high hazard dam and

extend the service life to 100 years, reducing the risk of catastrophic dam failure and loss of life and accommodate additional water supply storage for the City of Perry. The project is **not** a water dependent activity. The Corps defines a “water dependent activity” where the activity associated with a discharge which is proposed for a special aquatic site requires access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose.

Summary Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Water	Type of Fill Material	Qty of Material below OHWM (cys)	Footprint (ac or lf)
Borrow Area 1	Excavation / redistribution	Conservation Pool	On-site soil/loam/silt/clay	1,455	0.5 ac
Borrow Area 2	Excavation / redistribution	Conservation Pool	On-site soil/loam/silt/clay	14,452	2.1 ac
Haul Route	Redistribution	Conservation Pool	On-site soil/loam/silt/clay	2,333	700 lf
Principal Spillway	Redistribution	Conservation Pool	On-site/soil/loam/silt/clay	1,144	0.14 ac
Principal Spillway (Concrete Riser)	Placement of fill	Conservation Pool	Cast concrete	101	0.008 ac
Plunge Pool	Riprap	Stream	Rip rap	218	0.04 ac
Wave Protection Area upstream side of dam	Riprap	Conservation pool	Rip rap	777	0.16 ac
Cow Creek and Tributaries	Raising of OHWM	Stream	No fill	n/a	2,806 lf
Emergent Fringe Wetlands	Raising of OHWM	Wetlands	No fill	n/a	9.61 ac
Forested Scrub-Shrub Wetlands	Raising of OHWM	Wetlands	No fill	n/a	18.22 ac
cubic yards (cys), ordinary high water mark (OHWM), acre (ac), linear feet (lf)					

Description of Work: The applicant proposes to conduct major dam rehabilitation of Lake Perry. The existing concrete principal spillway structure would be excavated, removed, and replaced with a new cast concrete tower and new conduit consisting of 101 cys of concrete fill material. The principal spillway would consist of a 4.5 ft wide by 13 ft long by 16 ft deep reinforced concrete, baffled top, drop inlet riser with a 48-inch inner diameter reinforced concrete cylinder pipe conduit. The new principal spillway conduit would discharge floodwater through the embankment to a new impact basin and riprap (218 cys) lined channel downstream of the embankment, near the existing outlet channel. The principal spillway crest elevation would be raised 2.1 ft in order to provide

additional water supply storage for the City of Perry by raising the principal spillway elevation, the conservation pool would increase by 77 ac and would impact/inundate approximately 27.5 ac of wetlands and 2,806 ft of intermittent stream. It is estimated 33 ac of fringe wetlands would be created with the rise in the conservation pool level. Additionally, the front slope of the embankment would receive 777 cys of riprap in select locations to limit erosion due to wave action.

The rehabilitation project also includes the following: Borrow Areas 1 and 2 located northwest of the dam structure, adjacent to the existing pool area. Approximately 1,455 and 14,452 cys of soil respectively may be re-distributed from below the conservation pool elevation within these designated borrow areas to be used as fill for the rehabilitated dam improvements. A 30 ft wide by approximately 700 ft-long haul route would provide access to Borrow Area #2. The route would only be accessible by lowering the pool elevation of the reservoir during construction. Additionally, the current north auxiliary spillway would be expanded, and a south auxiliary spillway would be added to increase the total auxiliary spillway width to 800 ft. The changes to the auxiliary spillways do not result in any placement/redistribution of fill/dredge material within any waters of the United States.

Avoidance and Minimization Information: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

Contractor(s) would be required to develop a Storm Water Protection Plan for construction activities in order to minimize runoff into Cow Creek during construction. Avoidance would be put into place when dealing with threatened and endangered species. Potential maternity trees for the Tri-colored bat will be felled during the bats inactive period (Nov 15 – Mar 31).

Mitigation: Furthermore, the applicant proposes the following as compensatory mitigation for the unavoidable impacts to aquatic resources expected from the proposed project:

Compensation for impacts to waters of the United States would be accomplished through on-site in-kind mitigation as well as off-site in-kind mitigation (same HUC 8). Upper Black Bear Creek watershed is outside the service area of any mitigation bank or In-lieu fee program. The proposed on-site mitigation would occur on two intermittent streams that feed into Lake Perry. These two stretches of stream are located on City of Perry property and can be easily accessed by dirt road. Off-site mitigation would be conducted on two stretches of Cow Creek north of the City of Perry. These stretches are located on City of Perry property. Mitigation would compensate for unavoidable impacts associated with the rehabilitation project. These mitigation sites were selected because of their proximity, common ownership, and high potential for functional improvements in habitat and water quality for Lake Perry. Mitigation would involve the removal of eastern red cedar along these stream stretches. The sponsors would be responsible for the operation and maintenance of

the riparian buffers along these stream stretches. Long-term site protection and maintenance would retain functional gains of these streams.

This mitigation plan is the applicant's proposal. The Corps has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines. Compensatory Mitigation for unavoidable impacts may be required to ensure that this activity requiring a Section 404 permit, if issued, complies with the Section 404 (b)(1) Guidelines. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Government Authorizations obtained or received: The NRCS is the lead federal agency for this project and has completed their National Environmental Policy Act documentation as of March 2012.

Project Setting: The proposed project is located in the Cross Timbers Transition ecoregion of the Central Great Plains. The Cross Timbers Transition contains rough plains covered by prairie grasses and oak trees, elms, and eastern red cedar. This area transitions from the sparsely grass covered rugged region to the west and the hilly, oak savannas of the Cross Timbers ecoregion to the east. Land use around the project is a mixture of rangeland and cropland, with rangeland being more common. Lake Perry is an impoundment of Cow Creek, which is a perennial tributary to Black Bear Creek, which flows for approximately 65 miles into the Arkansas River above Keystone Lake. Within the watershed, Lake Perry has a drainage area of 10,297 ac and receives an average of 18.05 inches of rain annually. The project generally lies on the gently westward-dipping geologic units of the Prairie Plains Homocline, and consists of shale, sandstone, limestone, and siltstone. The unit is several hundred feet thick and has a north to south outcrop pattern 20 to 30 miles wide.

Existing Condition: The existing dam and associated infrastructure was a rehabilitation of a dam and water intake structure built in 1936. The current dam has the following deficiencies: The auxiliary spillway capacity is insufficient for a high hazard facility and undersized given updated hydrologic information for the watershed. The revised design hydrograph for the dam could overtop the dam and/or cause erosion of the existing auxiliary spillway leading to a breach of the dam during a flood event. The principal spillway capacity and condition is insufficient to convey the design flood, is not stable under seismic load, and does not have an appropriate filter diaphragm to address potential seepage or internal erosion along the outside of the conduit. The 48-inch municipal drawdown conduit has an inoperable gate and does not have a filter diaphragm. Gate failure could result in uncontrolled release from the reservoir, and the gate is beyond its design life. The dam embankment does not have a chimney drain to mitigate seepage, cracking, internal erosion, or potential dispersive materials. In addition, a flatter downstream side slope and embankment mass will improve dam stability.

Cultural Resources: The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended, and other cultural resources laws and Executive Orders. For this project, the NRCS is the lead federal agency. No cultural resources were identified in the area of potential effect based on pedestrian inventories and consultation with the Oklahoma Archaeological Survey, State Historic Preservation Officer (SHPO), and Tribes. (Concurrence Letter from Oklahoma SHPO received July 9, 2013; Concurrence Letter from Oklahoma Archeological Survey received July 18, 2013). The project resulted in a finding of no effect to historic properties.

Threatened and Endangered Species: For this project, the NRCS is the lead federal agency. The following federally listed species are known to occur in the vicinity or are listed for the county in which the proposed action is located: Tri-colored bat (*Perimyotis subflavus*), Piping plover (*Charadrius melodus*), Red knot (*Calidris canutus rufa*), Whooping crane (*Grus americana*), and Monarch butterfly (*Danaus plexippus*). Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service has concluded that the proposed rehabilitation project “May affect, not likely to adversely affect” federally listed species (IPaC Consultation Code: 2023-0015761). The NRCS has already completed required compliance with Section 7 of the Endangered Species Act.

Evaluation Factors: The decision whether to issue a permit would be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. That decision would reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal would be considered, including the cumulative effects thereof: conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownerships, and, in general, the needs and welfare of the people. A permit would be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) Guidelines. Subject to the 404(b)(1) Guidelines and any other applicable guidelines or criteria, a permit would be granted unless the DE determines that it would be contrary to the public interest.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from Mr. Bryan Noblitt, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137; or telephone 918-669-7400.

Comments: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments

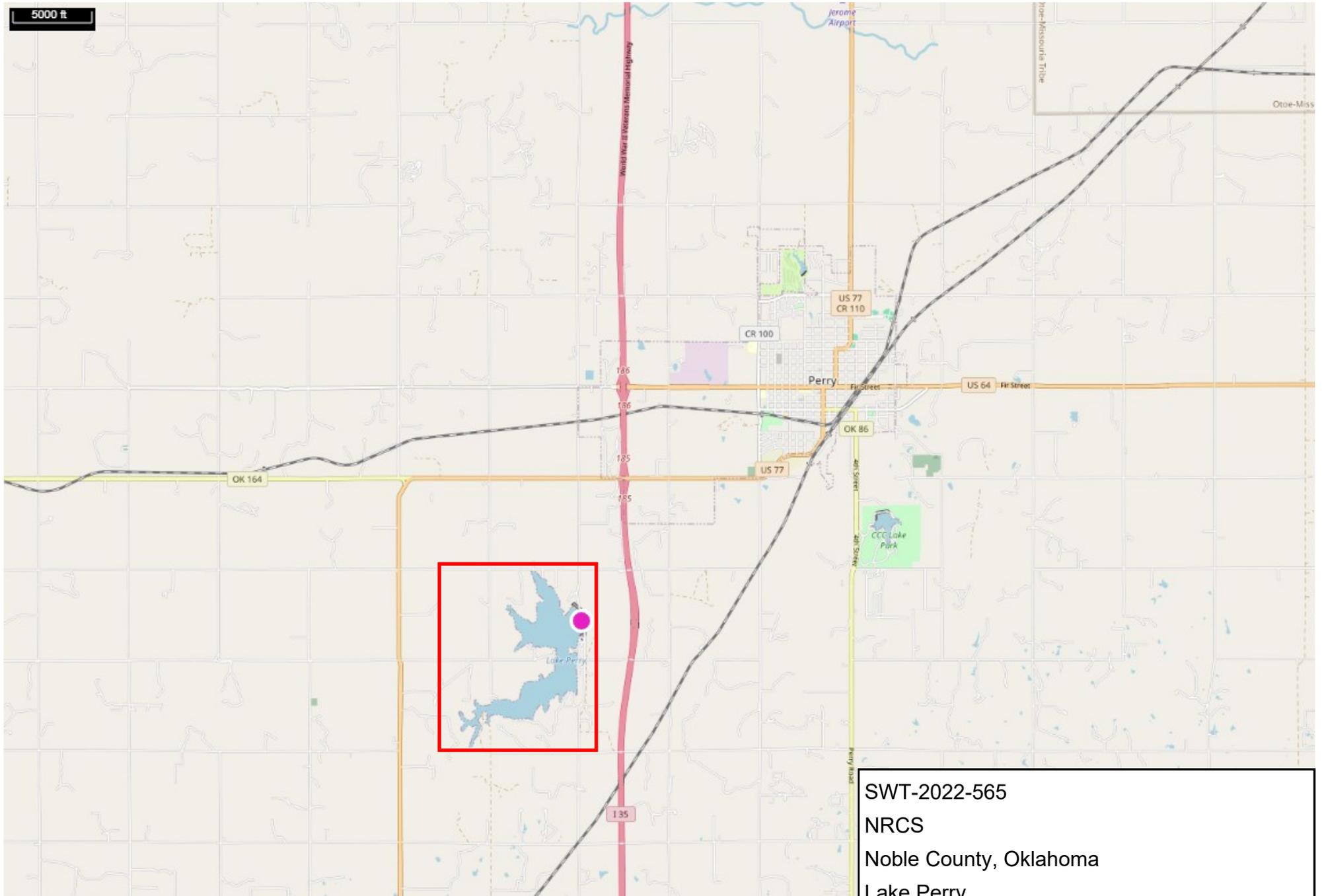
received would be considered by the Corps to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any comments on this proposal must be submitted to be received by the Corps by the expiration date of this public notice comment period. Comments received after this date would not be considered in our decision. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 2488 East 81st Street, Tulsa, OK 74137 or email CESWT-RO@usace.army.mil. Please include the public notice number SWT-2022-565 in the subject line of your email message.

Comments concerning water quality impacts would be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer
Chief, Regulatory Office

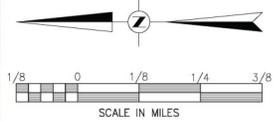
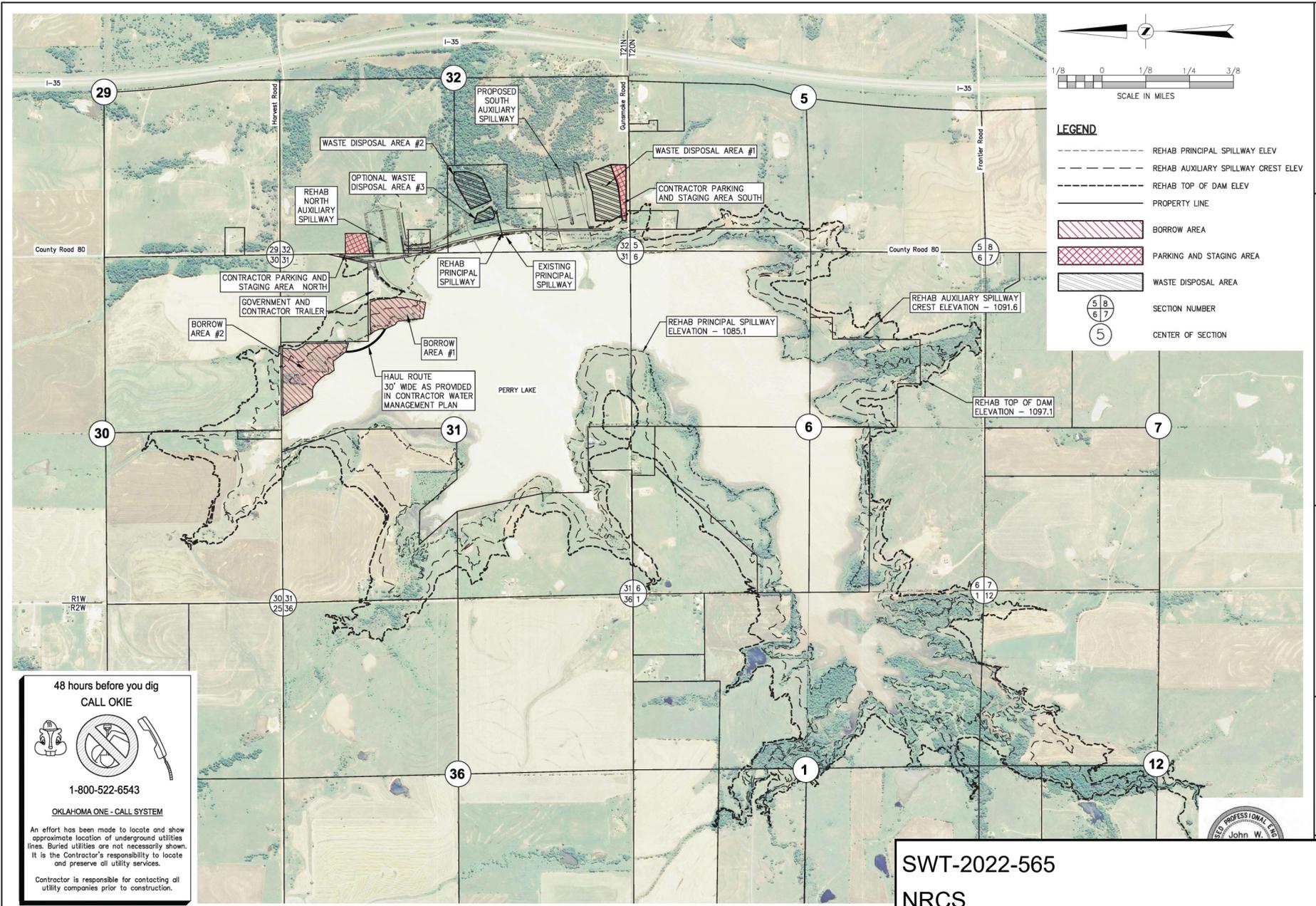
Enclosures



SWT-2022-565
NRCS
Noble County, Oklahoma
Lake Perry
Enclosure 1 of 6



SWT-2022-565
NRCS
Noble County, Oklahoma
Lake Perry
Enclosure 2 of 6



- LEGEND**
- REHAB PRINCIPAL SPILLWAY ELEV
 - REHAB AUXILIARY SPILLWAY CREST ELEV
 - REHAB TOP OF DAM ELEV
 - PROPERTY LINE
 - BORROW AREA
 - PARKING AND STAGING AREA
 - WASTE DISPOSAL AREA
 - SECTION NUMBER
 - CENTER OF SECTION

Date: 01-17
 Designed: J. CAMERON
 Drawn: S. POTTER
 Revised: 01-17
 Approved: J. CAMERON

RESERVOIR AREA MAP
 MULTIPURPOSE STRUCTURE SITE NO. 62
 UPPER BLACK BEAR CREEK WATERSHED
 NOBLE COUNTY, OKLAHOMA

KLEINFELDER
 PROFESSIONAL ENGINEERS
 HDR
 NRCS
 Natural Resources Conservation Service
 United States Department of Agriculture

48 hours before you dig
CALL OKIE

1-800-522-6543

OKLAHOMA ONE-CALL SYSTEM

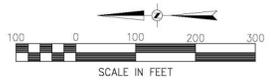
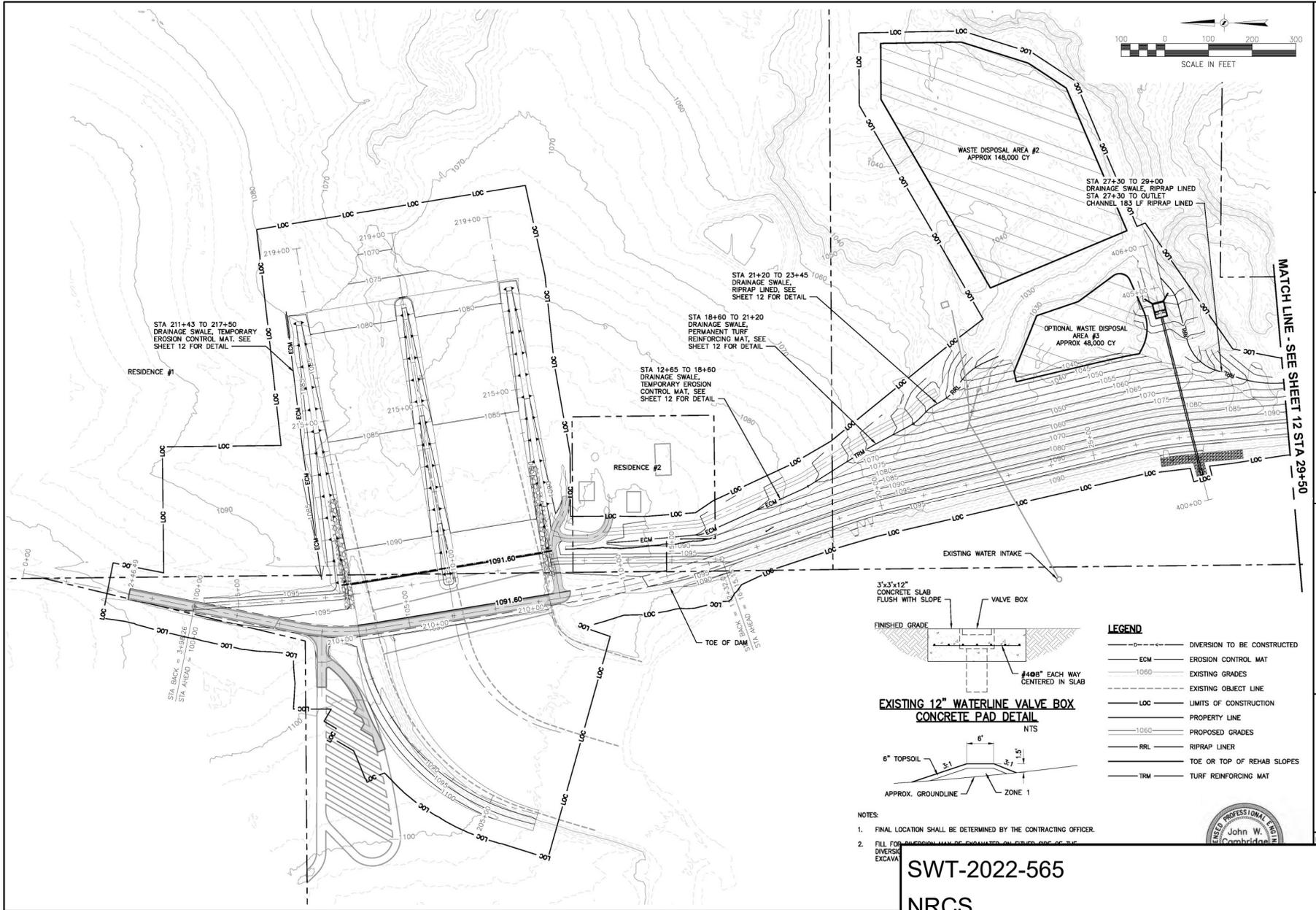
An effort has been made to locate and show approximate location of underground utilities lines. Buried utilities are not necessarily shown. It is the Contractor's responsibility to locate and preserve all utility services.

Contractor is responsible for contacting all utility companies prior to construction.

SWT-2022-565
 NRCS
 Noble County, Oklahoma
 Lake Perry
 Enclosure 3 of 6

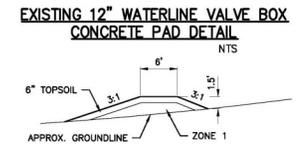
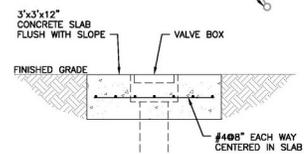


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Date: 01-17
 Designed: J. CAMBRIDGE
 Drawn: K. COHN
 Revised:
 Approved: J. CAMBRIDGE

GRADING, DRAINAGE AND EROSION CONTROL - NORTH
 MULTIPURPOSE STRUCTURE SITE NO. 62
 UPPER BLACK BEAR CREEK WATERSHED
 NOBLE COUNTY, OKLAHOMA



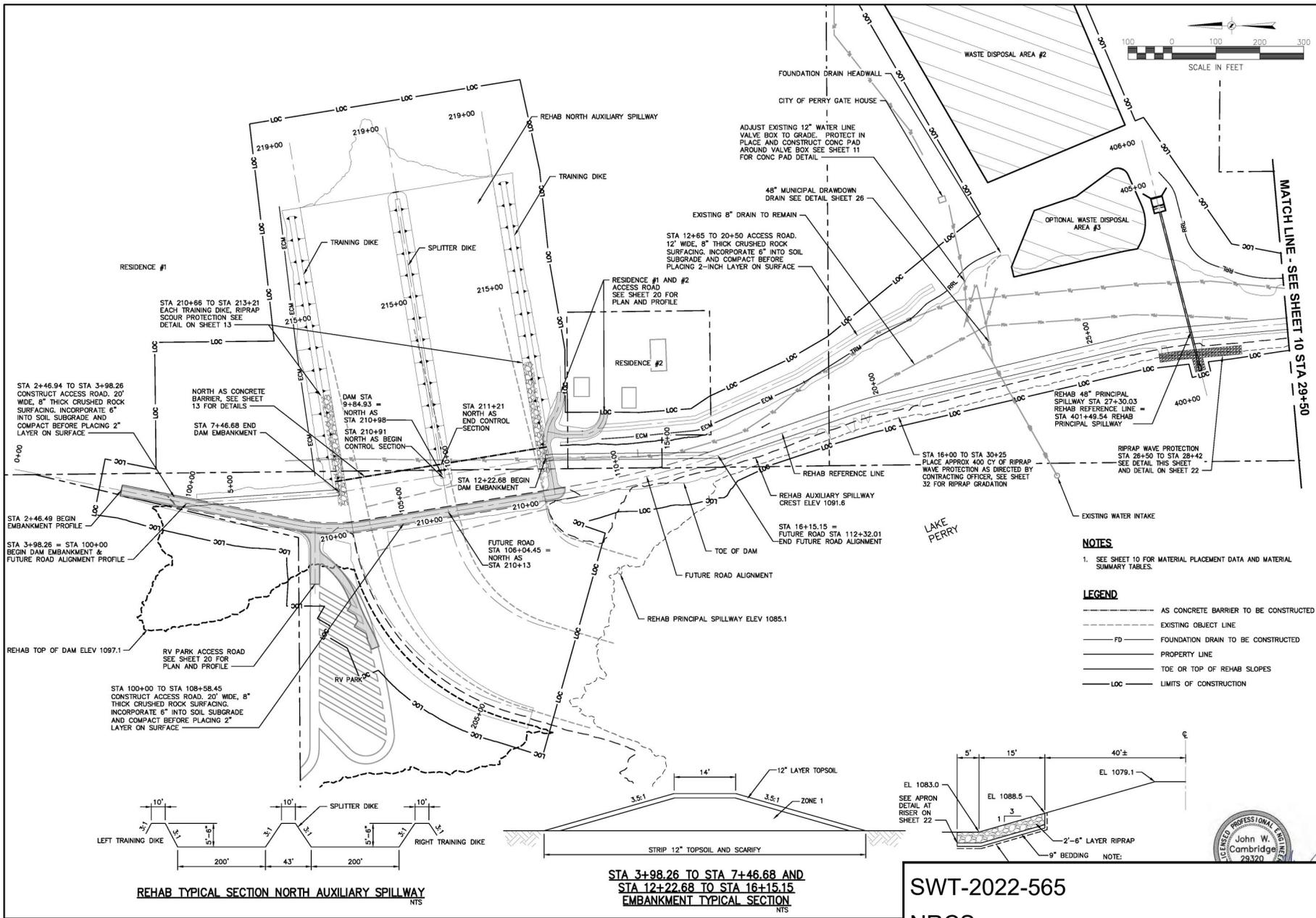
LEGEND

- DIVERSION TO BE CONSTRUCTED
- EROSION CONTROL MAT
- EXISTING GRADES
- EXISTING OBJECT LINE
- LIMITS OF CONSTRUCTION
- PROPERTY LINE
- PROPOSED GRADES
- RIPRAP LINER
- TOE OR TOP OF REHAB SLOPES
- TURF REINFORCING MAT

- NOTES:**
1. FINAL LOCATION SHALL BE DETERMINED BY THE CONTRACTING OFFICER.
 2. FILL FOR DIVERSION MAY BE EXAMINATED ON OTHER SHEETS OF THIS PLAN.

SWT-2022-565
 NRCS
 Noble County, Oklahoma
 Lake Perry
 Enclosure 4 of 6





Date	01-17
Designed	J. CAMBRIDGE
Drawn	K. COHN
Reviewed	J. CAMBRIDGE
Approved	J. CAMBRIDGE

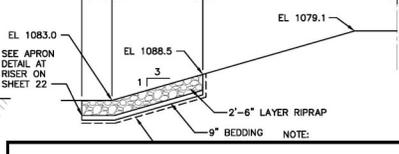
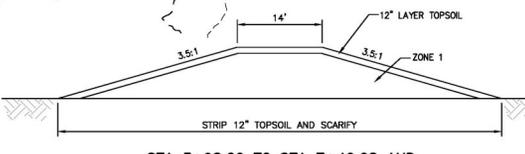
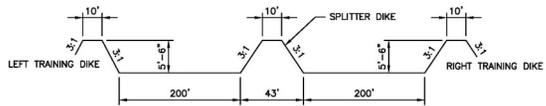
PLAN OF EMBANKMENT - NORTH
 MULTIPURPOSE STRUCTURE SITE NO. 62
 UPPER BLACK BEAR CREEK WATERSHED
 NOBLE COUNTY, OKLAHOMA



NOTES
 1. SEE SHEET 10 FOR MATERIAL PLACEMENT DATA AND MATERIAL SUMMARY TABLES.

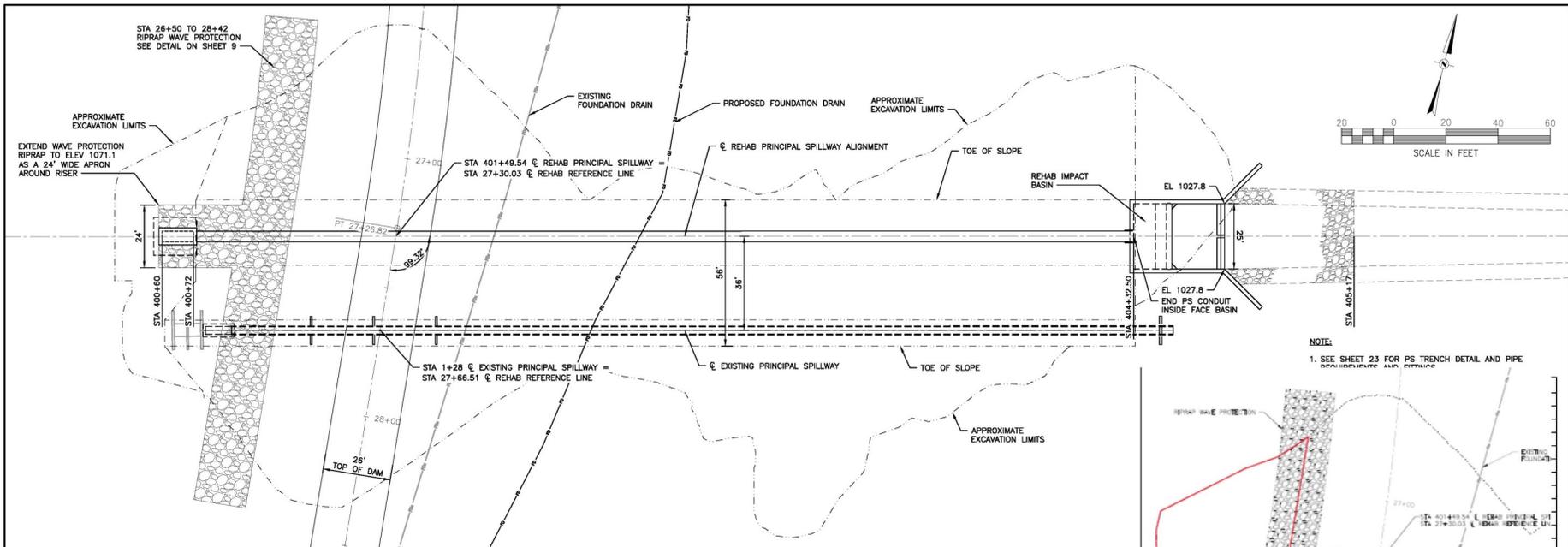
LEGEND

---	AS CONCRETE BARRIER TO BE CONSTRUCTED
---	EXISTING OBJECT LINE
---	FOUNDATION DRAIN TO BE CONSTRUCTED
---	PROPERTY LINE
---	TOE OR TOP OF REHAB SLOPES
---	LIMITS OF CONSTRUCTION

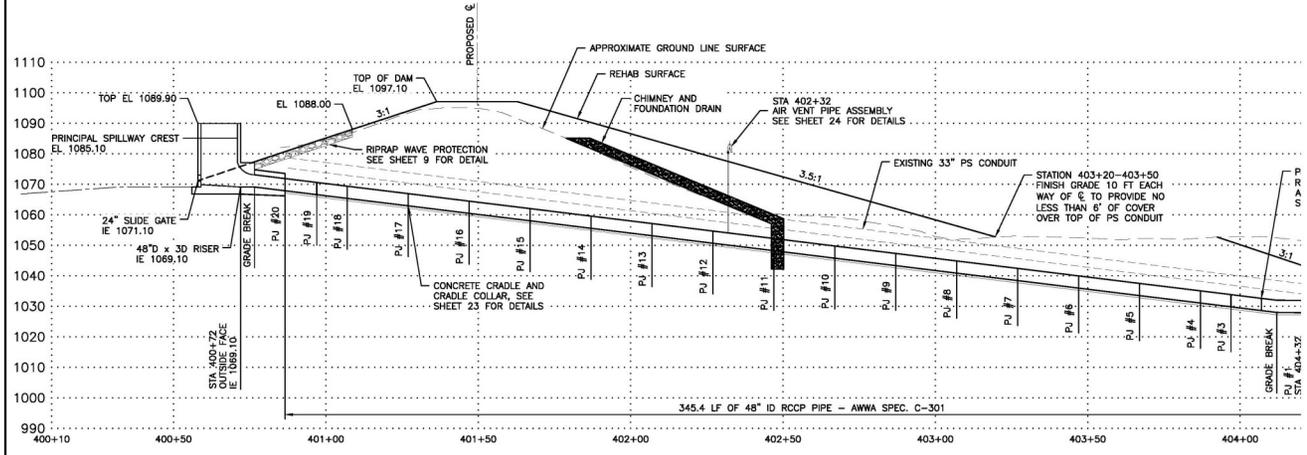


SWT-2022-565
 NRCS
 Noble County, Oklahoma
 Lake Perry
 Enclosure 5 of 6

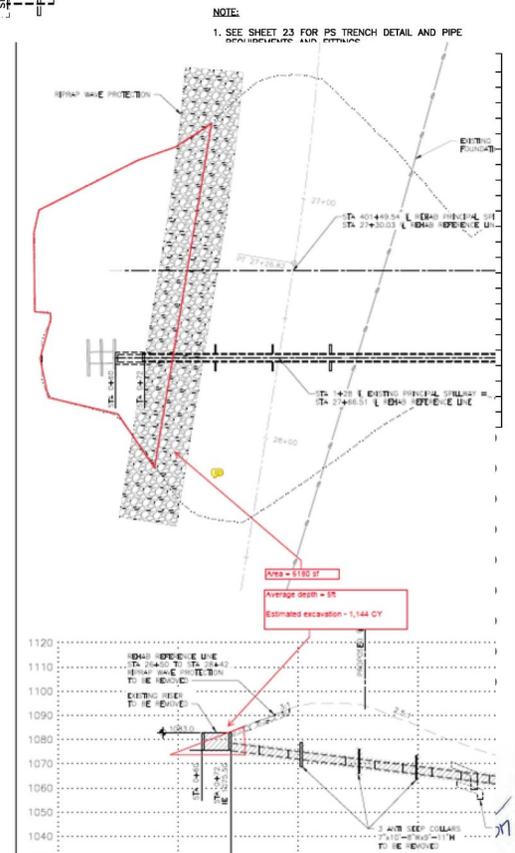
C:\perry\swt\2022\565\565.dwg Plot of Embankment - North.dwg 01/17/2022 12:38:22 PM - Admin



PLAN - PROPOSED PRINCIPAL SPILLWAY



PROFILE - PROPOSED PRINCIPAL SPILLWAY



Date	01-17
Designed	J. CAMBRIDGE
Drawn	G. PETERS
Revised	
Approved	J. CAMBRIDGE

PRINCIPAL SPILLWAY - PLAN AND PROFILE
 MULTIPURPOSE STRUCTURE SITE NO. 62
 UPPER BLACK BEAR CREEK WATERSHED
 NOBLE COUNTY, OKLAHOMA



Site Location:
 311-32, Principal Spillway
 Topographic Drawing for this sheet
 Drawing No.
 OK-429

SWT-2022-565
 NRCS
 Noble County, Oklahoma
 Lake Perry
 Enclosure 6 of 6

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