

APPENDICES FOR
WY HPP 4-1(5)
BEARTOOTH HIGHWAY

Appendix A – Special Use Permit (includes extension)

Appendix B – Environmental Checklist

Appendix C – U.S. Army Corps of Engineers Permit 199840159
(Option Y)

Appendix D – NPDES Permit (Option Y)

**WY HPP 4-1(5)
BEARTOOTH HIGHWAY**

**APPENDIX A - SPECIAL USE PERMIT
(INCLUDES EXTENSION)**

Special Use Permit

Authorization ID: CFK127
Contact ID: FED_HWY_ADMIN
Expiration Date: 12/31/2014
Use Code: 753

FS-2700-4 (05/03)
OMB 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SPECIAL USE PERMIT
AUTHORITY:
FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED October 21, 1976

Federal Highway Administration of Federal Highway Administration, Central Federal Lands Highway Division, 12300 W. Dakota Avenue, Suite 380, Lakewood, CO 80228 (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the Shoshone National Forest.

This permit covers 100 acres, and is described as shown on the location map, Exhibit A, attached to and made a part of this permit, and is issued for the purpose of support to the reconstruction of the Beartooth Highway:

Reconstruction of US Highway 212 from station 39+450 to Station 52+422.863, as detailed on US Department of Transportation, Federal Highway Administration clearing contract plans dated 6/7/2004 (Exhibit A).

Length of area authorized is 8.05 miles. Width is variable, as detailed on the clearing contract plats, by the "clearing limits" depiction.

Commitments outlined in the Record of Decision for this project, dated February 4, 2004 and in the Project Delivery Plan shall be adhered to.

Permit #CFK112 issued to the Federal Highway Administration on July 6, 2004 authorizes the ancillary construction activities associated with reconstruction of the Beartooth Highway.

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on 12/31/2014. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 60 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits laws, or regulations.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by August 3, 2004 and shall be completed by December 31, 2014. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S. C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this

authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form SF-299 Application for Transportation and Utility Systems and Facilities of Federal Lands, or Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. Damage to National Forest Interests, Property, or Resources. The holder, as an agency of the United States, is limited by Federal law as to the assumption of liability for its acts or omissions. The holder does agree, within its legal limitations, and limitations of appropriations, to be responsible for all costs of damages and injury to persons, personal property, and land caused by its operations and activities under the terms of this permit. The holder further agrees, to the extent legally permissible, to use its appropriations and resources as required to pay any awards or claims, and to repair damages to the land within the permit area. It is the intent of this provision that the appropriations of the Forest Service be shielded from burdens, other than administrative costs, which may occur as a result of the activities by the holder under the terms of this permit.

C. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

E. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

VI. FEES

Fees for this use have been exempted or waived in full pursuant to 36 CFR 251.57, or revisions thereto, and direction in FSH 2709.11, chapter 30.

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. Nondiscrimination in Employment and Services (B1). During the performance of this authorization, the holder agrees:

1. In connection with the performance of work under this authorization, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. (Ref. Title VII of the Civil Rights Act of 1964, as amended).

2. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex national origin, age, or disability, by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

3. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this authorization.

4. When furnished by the Forest Service, signs setting forth this policy of nondiscrimination will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

5. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the State in which the breach or violation occurs.

E. Explosives (B29).

1. Only exploding bridgewire (EBWs) shall be used for blasting except for hand charging of snow release zones.

2. In the use of explosives, the holder shall exercise the utmost care not to endanger life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages

resulting from the use of explosives and shall adopt precautions that will prevent damage to surrounding objects. The holder shall furnish and erect special signs to warn the public of blasting operations. Such signs shall be placed and maintained so as to be clearly evident to the public during all critical periods of the blasting operations, and shall include a warning statement to have radio transmitters turned off.

3. All storage places for explosives shall be marked "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives shall conform to procedures contained in the "Blasters Guide EM-7100-14," and Title 27, Code of Federal Regulations, parts 1 to 199, Alcohol, Tobacco Products, and Firearms (Bureau of Alcohol, Tobacco and Firearms (BATF)).

4. When using explosives, the holder shall adopt precautions which will prevent damage to landscape features and other surrounding objects. When directed by the Forest officer in charge, trees within an area designated to be cleared shall be left as a protective screen for surrounding vegetation during blasting operations. Trees so left shall be removed and disposed of after blasting has been completed. When necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

F. Site Development Schedule (C1). The holder shall prepare by **August 8, 2004** a schedule for the progressive development and installation of facilities on the permitted site. This schedule shall be made a part of this authorization. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met and that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date.

All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule.

G. Site Plan (C2). The holder shall prepare site plans to show the location of all buildings, service areas, roads, and structures. Such plans shall be on a scale of 1 inch = 50 feet with 2 foot contour intervals. The holder is encouraged to consult with the authorized officer during the preparation of the site plan to ensure that it is adequate. No construction shall be undertaken by the holder prior to site plan approval.

H. Removal and Planting of Vegetation and Other Resources (D5). The holder shall obtain prior written approval from the authorized officer before removing or altering vegetation or other resources. The holder shall obtain prior written approval from the authorized officer before planting trees, shrubs, or other vegetation within the authorized area.

I. Revegetation of Ground Cover and Surface Restoration (D9). The holder shall be responsible for prevention and control of soil erosion and gullyng on lands covered by this authorization and adjacent thereto, resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. The holder shall revegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use and shall construct and maintain necessary preventive measures to supplement the vegetation.

J. Timber Payment (D17). All National Forest timber cut or destroyed in the construction of the permitted improvements shall be paid for at current stumpage rates for similar timber in the National Forest. Young-growth timber below merchantable size will be paid for at current damage-appraisal value; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as necessary or as the Forest Service may direct.

K. Pesticide Use (D23). Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. A request for approval of planned uses of pesticides will be submitted annually by the holder on the due date established by the authorized officer. The report will cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review will be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time an annual report was submitted.

Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions will be strictly followed in the application of pesticides and disposal of excess materials and containers.

L. Authorization Termination of Withdrawn Land (E11). Any lands described in this authorization which have been withdrawn for waterpower purposes under the Act of March 3, 1879, or Act of June 25, 1910 (or are embraced in an application or license under the Federal Power Act of June 10, 1920), or have been withdrawn under the Reclamation Act of June 17, 1902, are subject at any time to use in connection with the development of hydropower or for reclamation purposes. This authorization, therefore, is issued with the specific understanding that (1) its use shall not interfere with such hydropower or reclamation development and that (2) the authorization may be, if necessary, terminated upon ninety (90) days notice when in the judgment of the Federal Energy Regulatory Commission, or of the Bureau of Reclamation in the event of reclamation withdrawals, the lands occupied are needed for use in connection with the generation of hydroelectric power, reclamation developments, or other purposes contemplated by the act or acts under which the lands have been withdrawn. No claim shall be made against the United States or power licensees for or on account of prospective profits or for any injury or damage to properties, improvements, or operations due to such development. The holder will be allowed ninety (90) days in which to remove the improvements.

M. Fire Equipment (F7). The holder shall install fire extinguishers and firefighting apparatus of types, of capacities, in numbers, and at locations approved by the authorized officer. This equipment shall be in readiness at all times for immediate use, and shall be tested each year, at such times as may be required by the authorized officer.

N. Protection of Habitat of Endangered, Threatened, and Sensitive Species (X8). Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act of 1973, as amended, or as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this authorization, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the authorization holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

O. Archaeological-Paleontological Discoveries (X17). The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this authorization, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

P. Improvement Relocation (X33). This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

Q. Water Rights (X74). This authorization does not convey any legal interest in water rights as defined by applicable State law.

R. Disputes (X96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

S. Solid and Hazardous Waste Disposal (R2-B-3). During the term of this authorization, the Holder shall consult with the Environmental Protection Agency and shall comply with all applicable laws and regulations regarding "solid waste" and "hazardous waste" under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901).

T. Alteration of Government Improvements (D-16) If during the term of this permit any Government owned improvements are altered in any way, the material, equipment, fixtures or other appurtenances that are affixed to or made a part of those improvements in connection with the alteration shall become the property of the United States, regardless of whether the work is performed by the holder or any other party. The holder shall not be entitled to any compensation for that property, other than to the extent it qualifies for fee offset.

U. Operating Plan (C-8)

The holder shall provide an Operating Plan. The plan shall be prepared in consultation with the authorized officer or designated representative and cover operation and maintenance of facilities, dates or season of operation, and other information required by the authorized officer to manage and evaluate the occupation and/or use of National Forest System lands. The provisions of the Operating Plan and the annual revisions shall become a part of this authorization and shall be submitted by the holder and approved by the authorized officer or their designated representative(s). This Operating Plan is hereby made a part of the authorization.

V. Surveys, Land Corners

The holder shall protect, in place, all public land survey monuments, private property corners, and Forest boundary markers. In the event that any such land markers or monuments are destroyed in the exercise of the privileges permitted by this authorization, depending on the type of monument destroyed, the holder shall see that they are reestablished or referenced in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States", (2) the specifications of the county surveyor, or (3) the specifications of the Forest Service. Further, the holder shall cause such official survey records as are affected to be amended as provided by law. Nothing in this clause shall relieve the holder's liability for the willful destruction or modification of any Government survey marker as provided at 18 U.S.C. 1858.

W. **SH - X2 - Grizzly Bear Protection**

This special use authorization is for the use of land which is part of the habitat of the grizzly bear. The following conditions under the Endangered Species Act of 1973, 16 U.S.C. 1531, apply to this special use authorization:

1. The authorized officer may order an immediate temporary suspension of all human activity permitted by this authorization. Further, the authorization may be revoked or terminated when, in his/her judgment, such action is necessary to prevent confrontation or conflict between humans and grizzly bears. The holder shall immediately comply with such action. The United States shall not be liable for any consequences from such suspension, revocation, or termination. Such suspension, revocation, or termination may be appealed to the next higher level as provided in 36 CFR 217 or 251.
2. The holder, his/her agents, employees, contractors, and subcontractors will comply with the requirements of the Grizzly Bear Management and Protection Plan (which is a required part of the Operating Plan) in the conduct of any and all activities authorized. The authorized officer may review and revise the plan as needed.
3. The holder assumes full responsibility and shall hold the United States harmless from any and all claims by him/her or by third parties for any damage to life or property arising from the activities authorized by this special use authorization and encounters with grizzly bears, or from suspension, revocation, or termination of activities authorized by this special use authorization.
4. Intentional or negligent acts by the holder, his/her agents, employees, contractors, and subcontractors that result in injury or death of a grizzly bear will be cause for revocation or termination of this authorization in whole or part.
5. Failure to comply with provision 1, 2 or 3 may result in suspension, revocation, or termination of this authorization in whole or part and may cause criminal action to be taken against the holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

The Grizzly Bear Management and Protection Plan provided for in paragraph 2 will address the following actions, guidelines, and procedures to assure compliance with regulations and best management practices in order to prevent human/bear conflicts and to minimize injuries if involved in an encounter with a bear:

1. Bear-resistant storage facilities available
2. Human Food handling and storage procedures
3. Livestock/pet food handling and storage procedures
4. Garbage & refuse handling and disposal procedures
5. Game carcass handling and storage procedures
6. Livestock carcass disposal procedures
7. Human safety awareness training, human/bear conflict prevention procedures, and encounter procedures
8. Human activity restrictions by activity, area, season, etc.

V. Area Access (X-19)

The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

W. Implied Permission (X-3)

Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit, or permit amendment.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection on information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This permit is accepted subject to the conditions set out above.

HOLDER NAME: Federal Highway Administration
Central Federal Lands Highway Division

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: Bert J. Coulter
(Holder Signature)

By: N. Bryan Arnold
(Authorized Officer Signature)

By: [Signature]
(Holder Signature)

Title: for Forest Supervisor
(Name and Title)

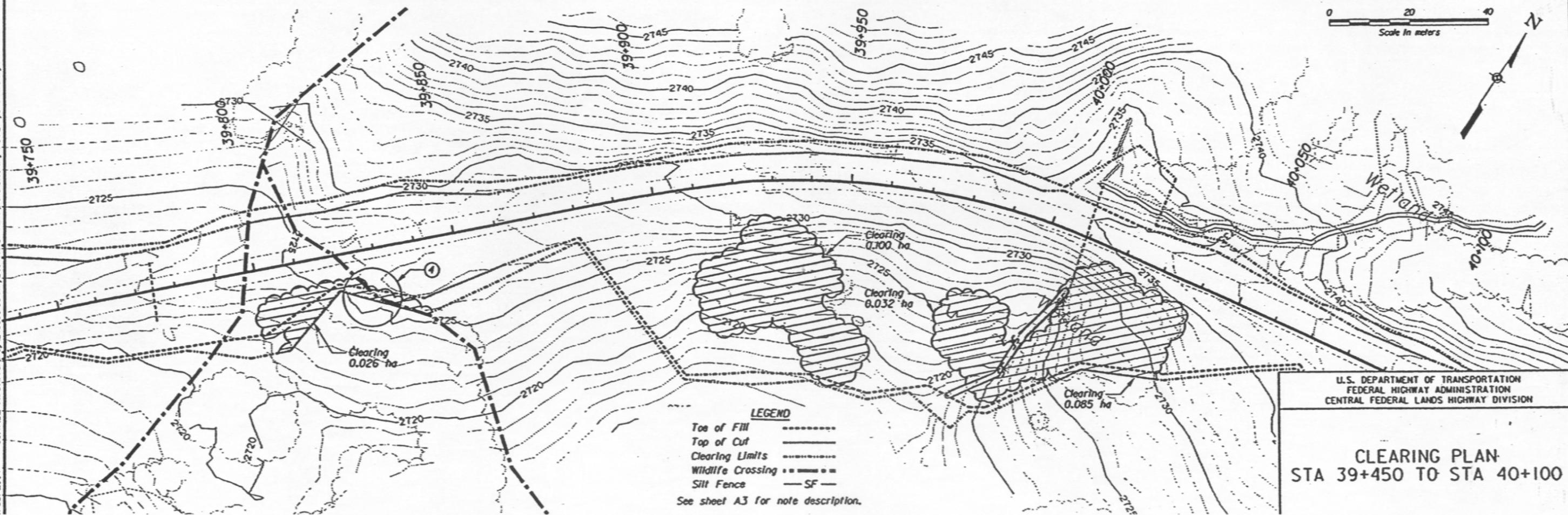
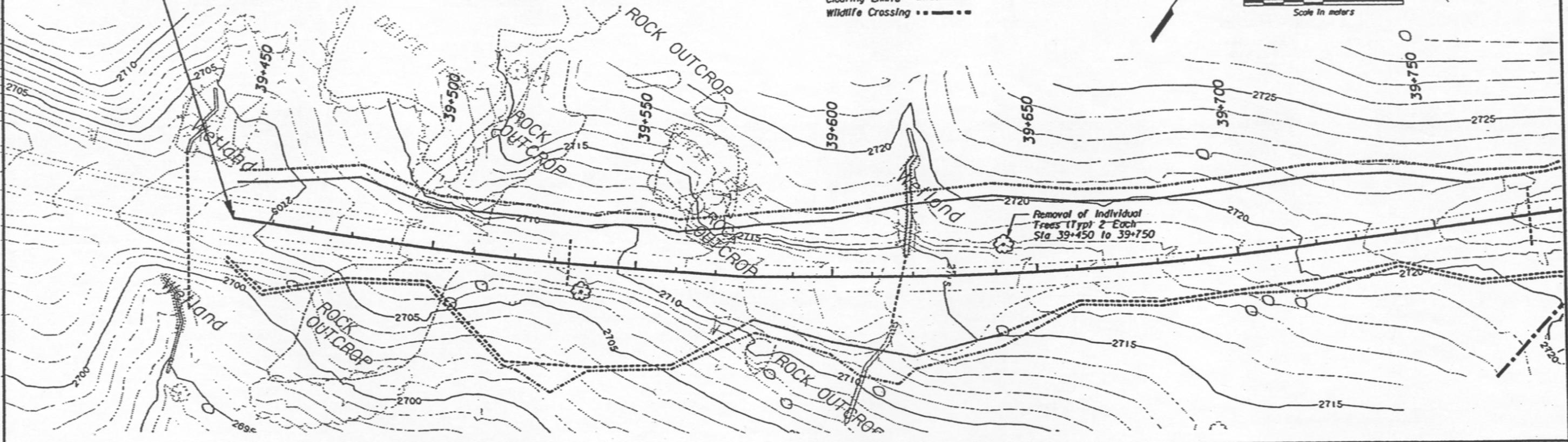
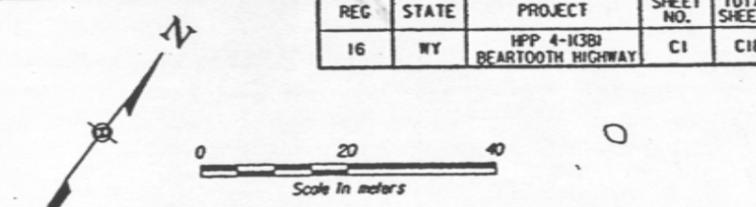
Date: Aug. 2, 2004

Date: 8/05/04

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	NY	HPP 4-1(3B) BEARTOOTH HIGHWAY	C1	C18

Begin Project HPP 4-1(3B)
Sta 39+450

LEGEND
 Toe of Fill -----
 Top of Cut _____
 Clearing Limits
 Wildlife Crossing - - - - -
 Silt Fence — SF —



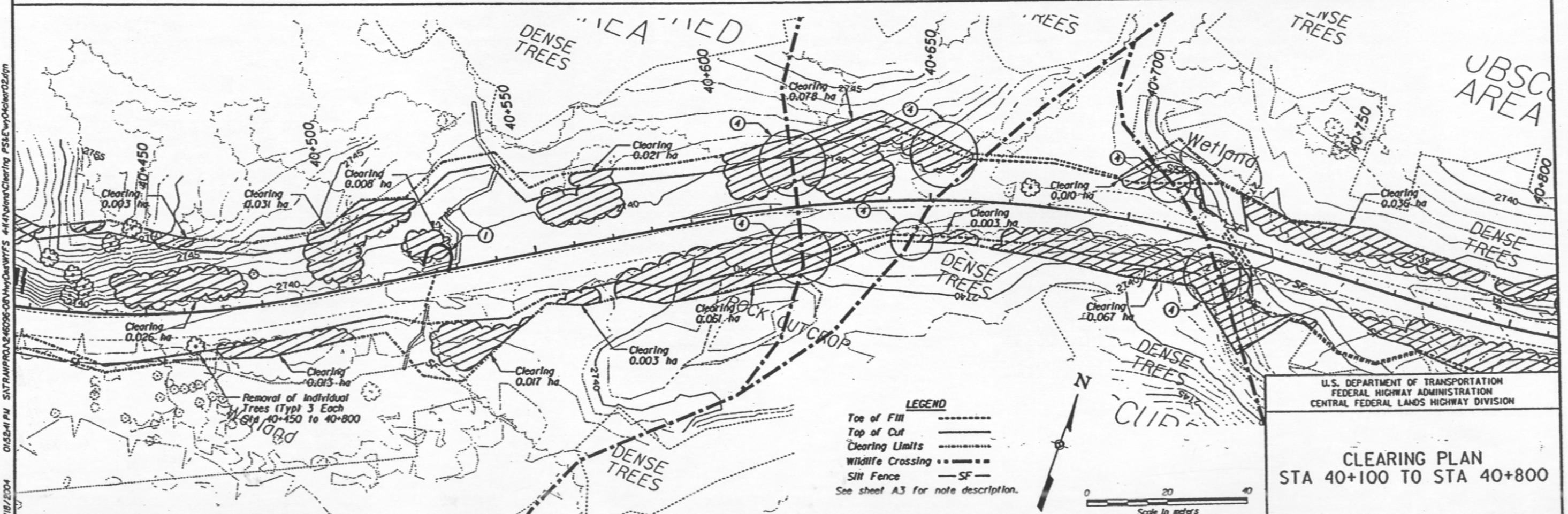
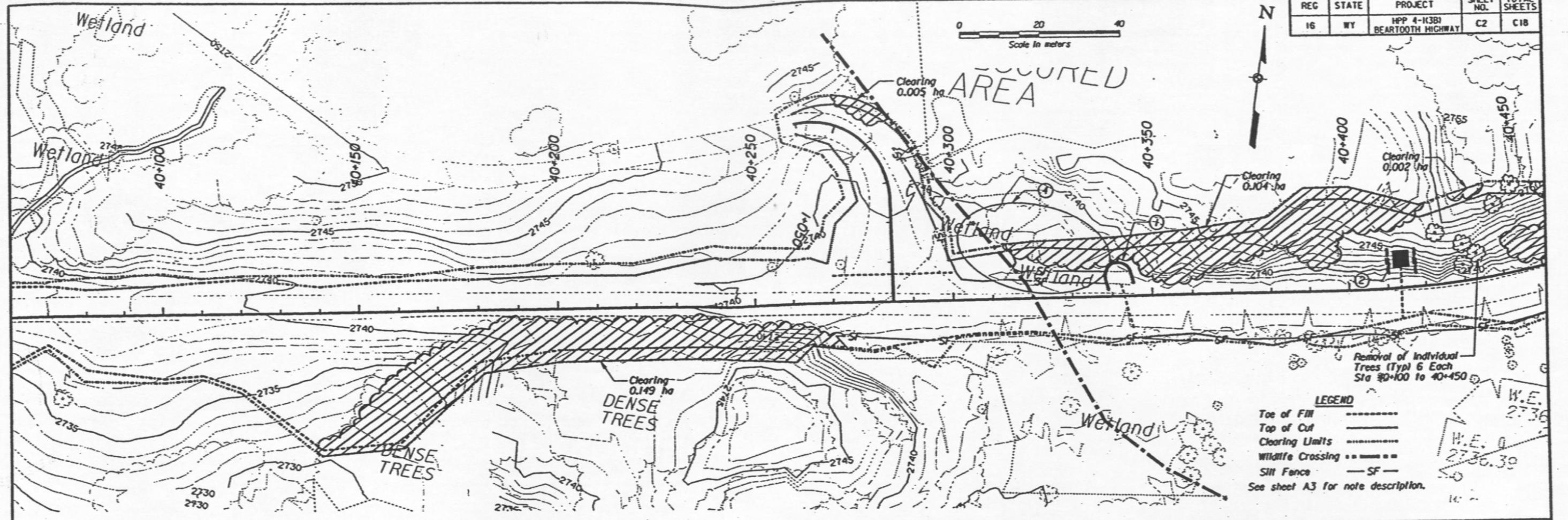
LEGEND
 Toe of Fill -----
 Top of Cut _____
 Clearing Limits
 Wildlife Crossing - - - - -
 Silt Fence — SF —
 See sheet A3 for note description.

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 39+450 TO STA 40+100

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REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
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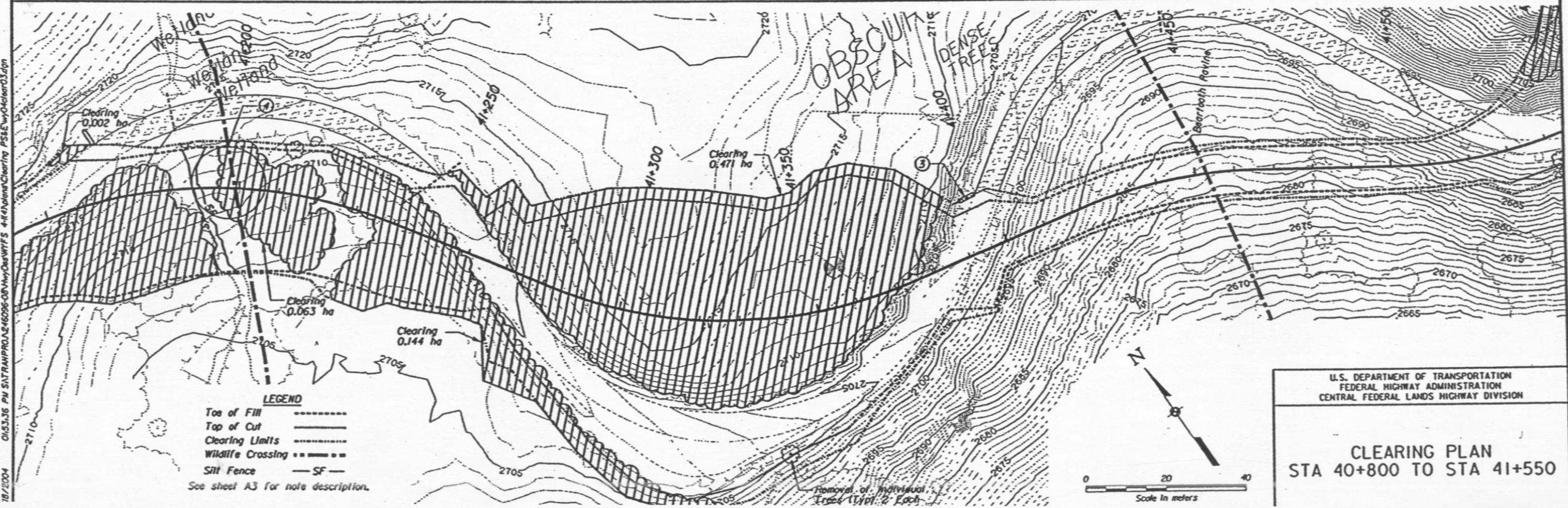
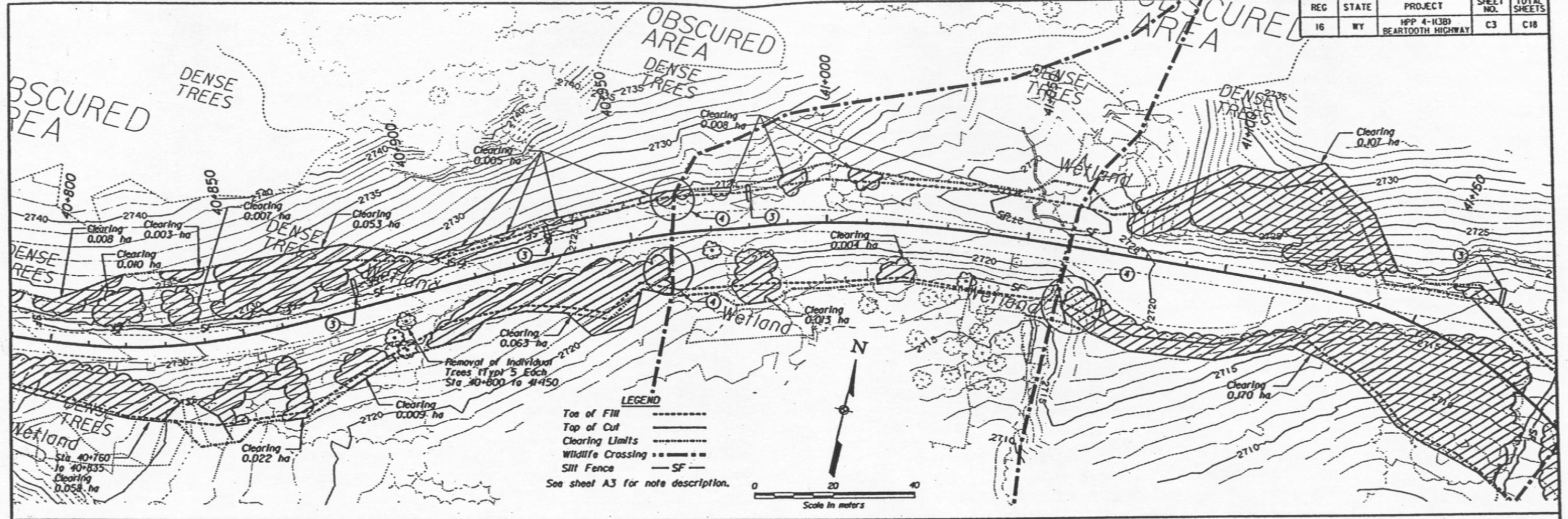


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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 40+100 TO STA 40+800

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
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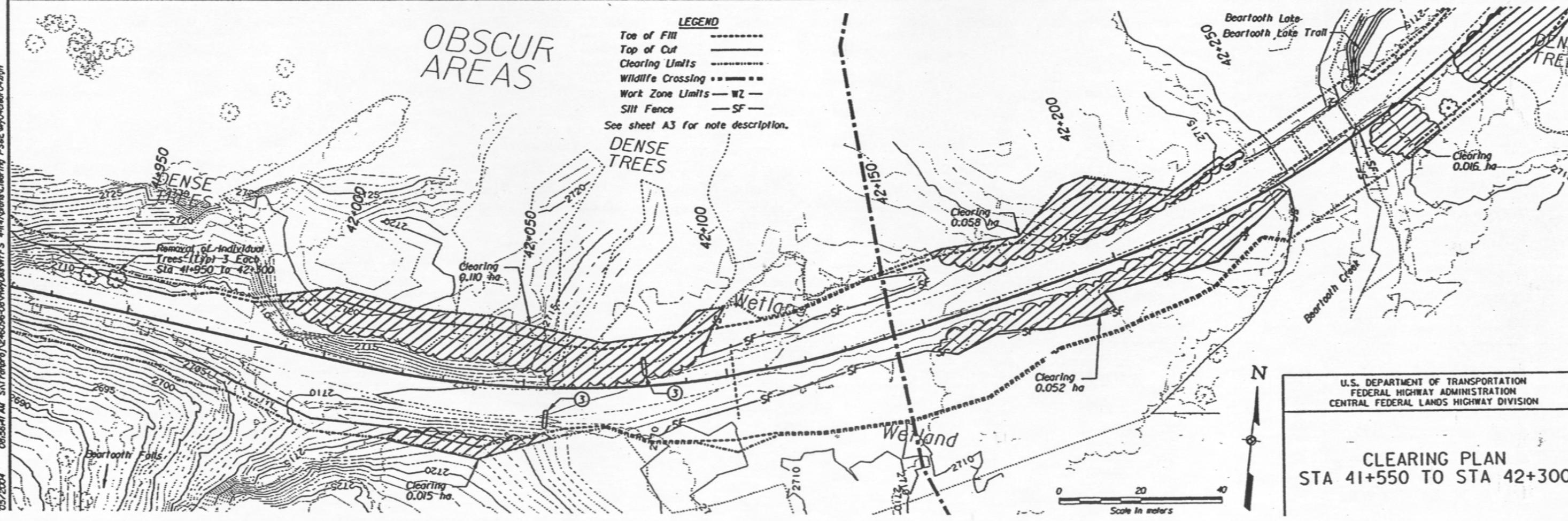
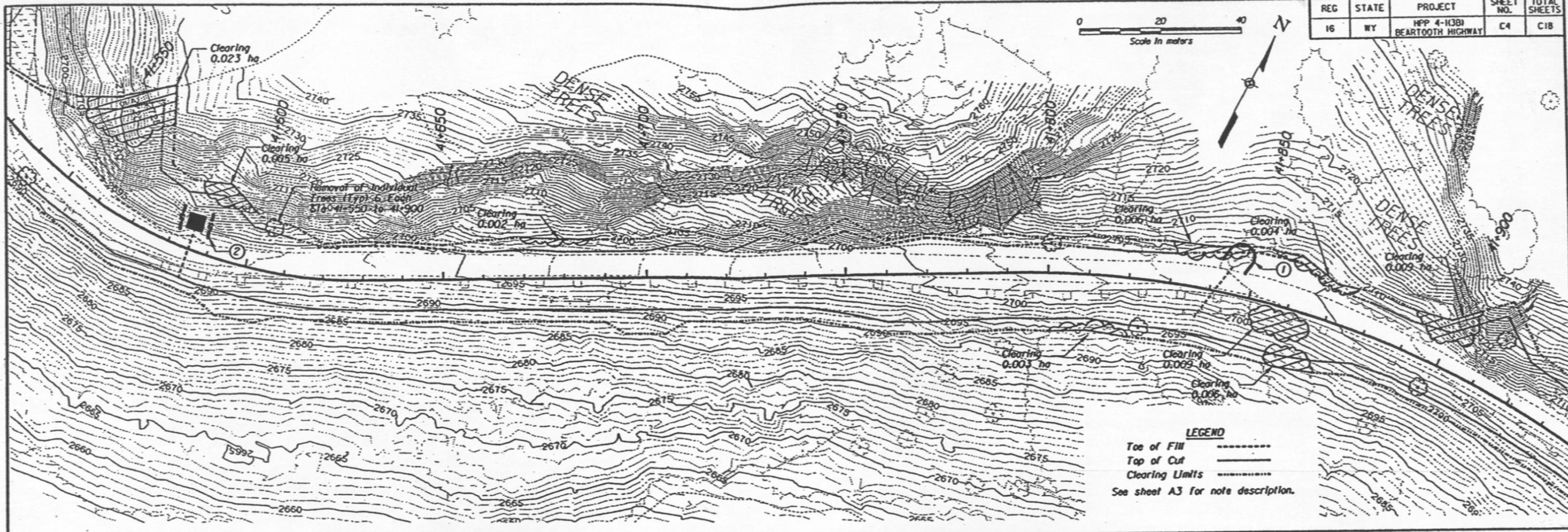


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 40+800 TO STA 41+550

18/2004 01:53:36 PM SIXTRAMP/PROJ/246096-08/HighwayClearing PS&E/wo/clar03.dgn

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-1(3B) BEARTOOTH HIGHWAY	C4	C18

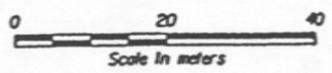
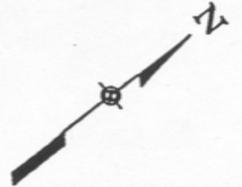


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

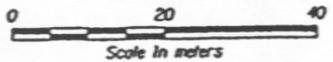
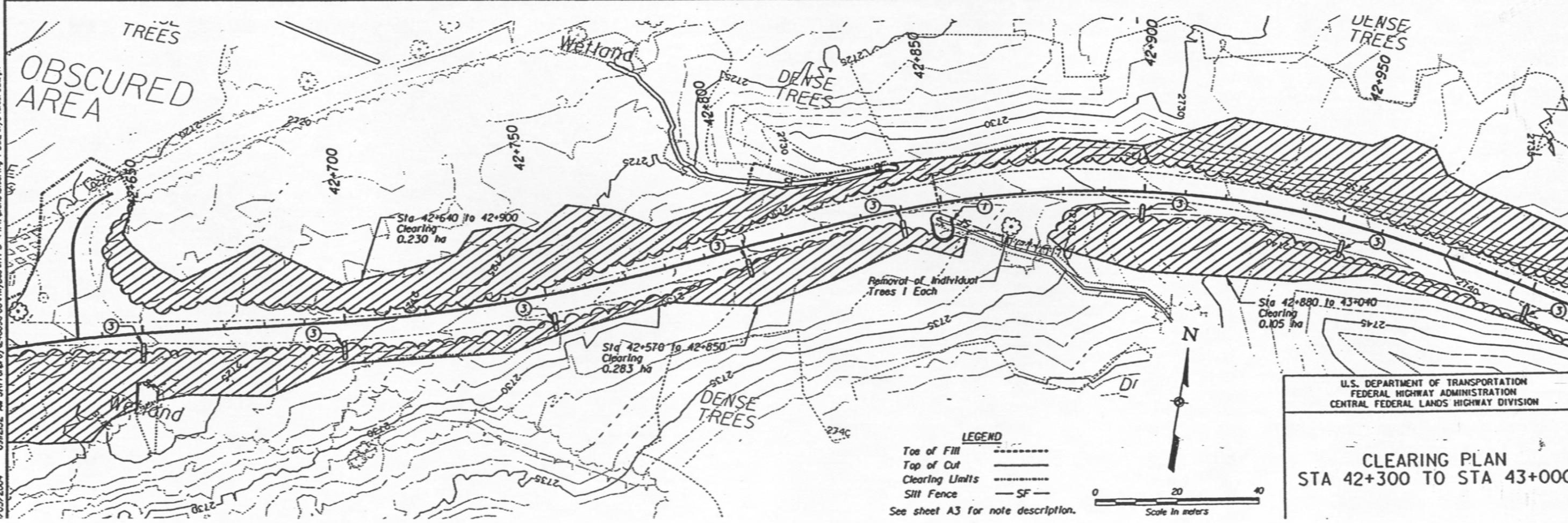
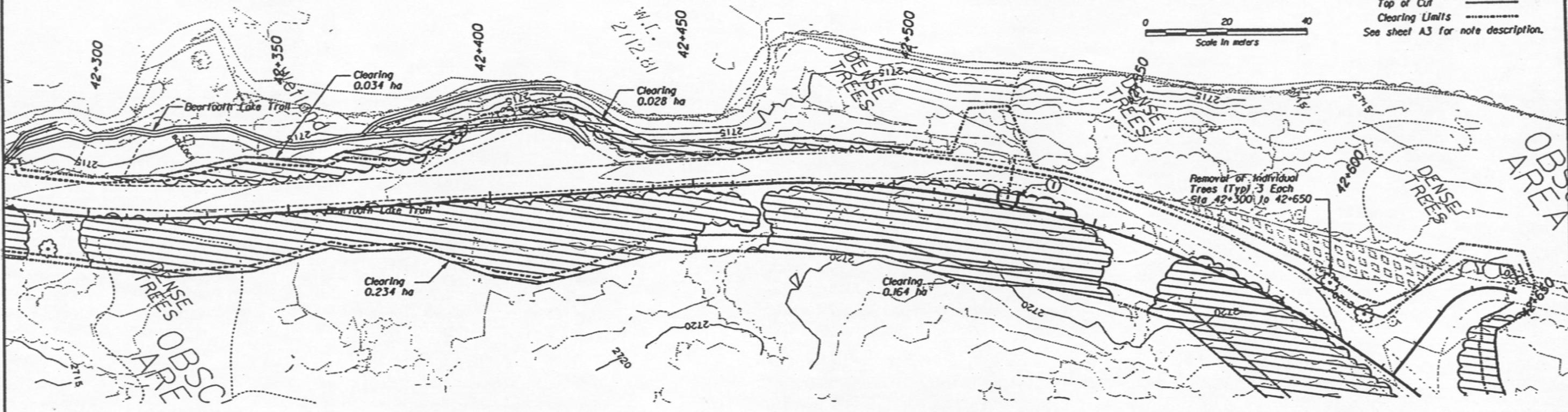
CLEARING PLAN
 STA 41+550 TO STA 42+300

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REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-11381 BEAR TOOTH HIGHWAY	C5	C18



LEGEND
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 Top of Cut -----
 Clearing Limits -----
 See sheet A3 for note description.



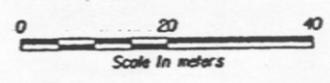
LEGEND
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 Top of Cut -----
 Clearing Limits -----
 Silt Fence — SF —
 See sheet A3 for note description.

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

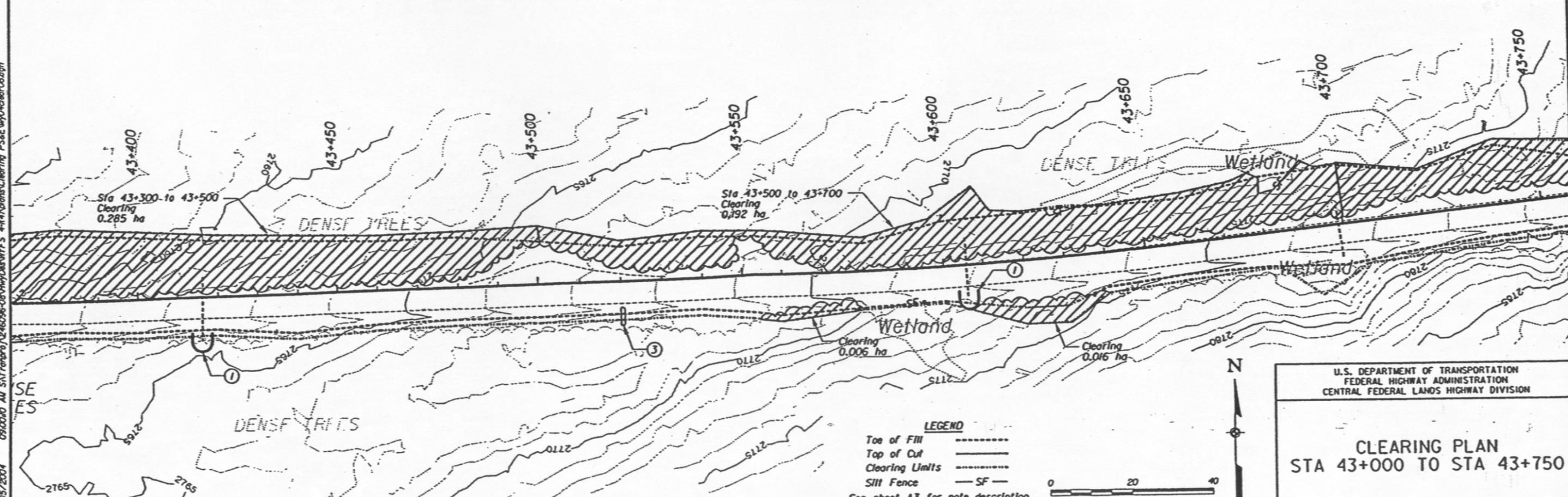
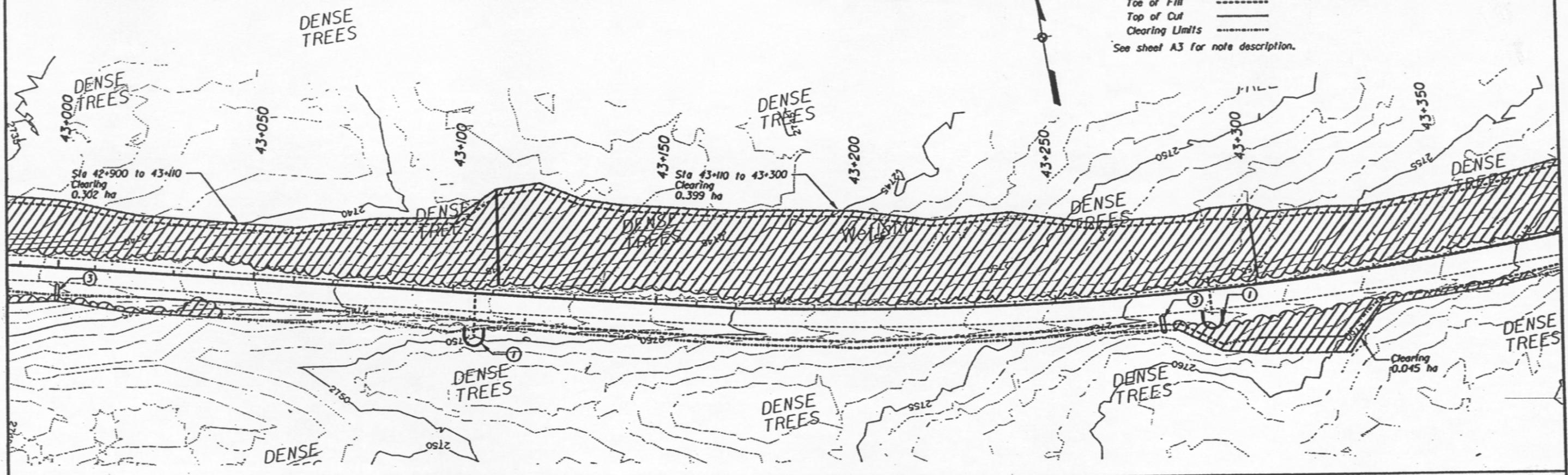
CLEARING PLAN
 STA 42+300 TO STA 43+000

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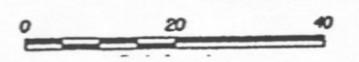
REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	FPP 4-103BI BEARTOOTH HIGHWAY	C6	C18



LEGEND
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 Top of Cut -----
 Clearing Limits -----
 See sheet A3 for note description.



LEGEND
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 Top of Cut -----
 Clearing Limits -----
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 See sheet A3 for note description.

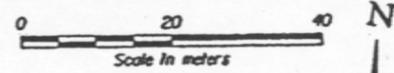


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

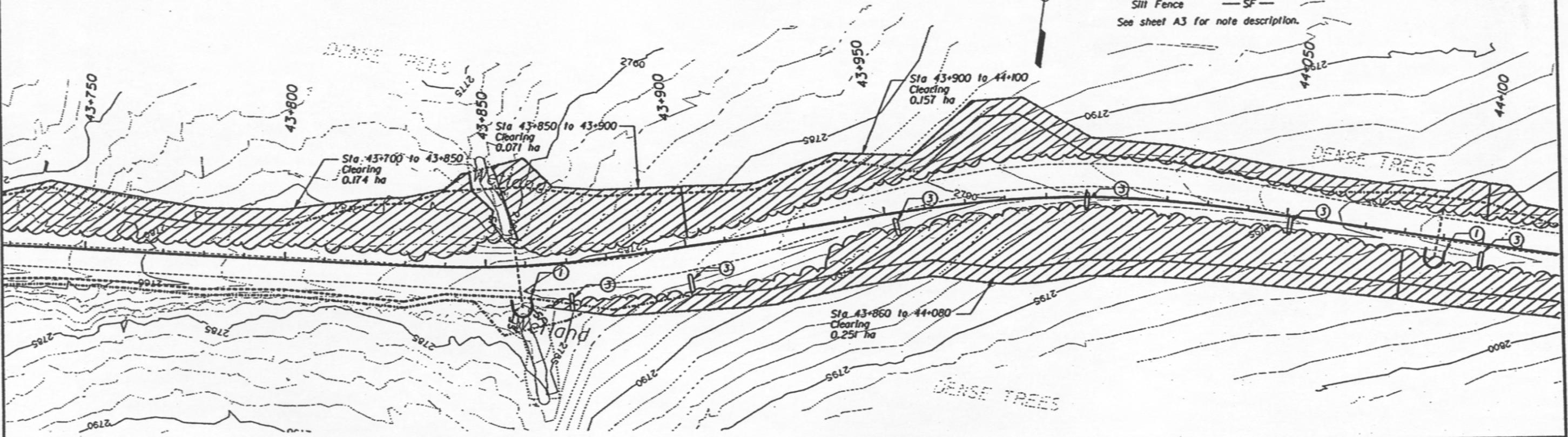
CLEARING PLAN
 STA 43+000 TO STA 43+750

08/2004 09:00:10 AU SAT rrrrrrr 2:46:09:08-HwyClearing PS&E-WyClearC6.dgn

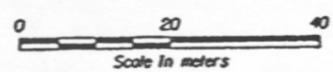
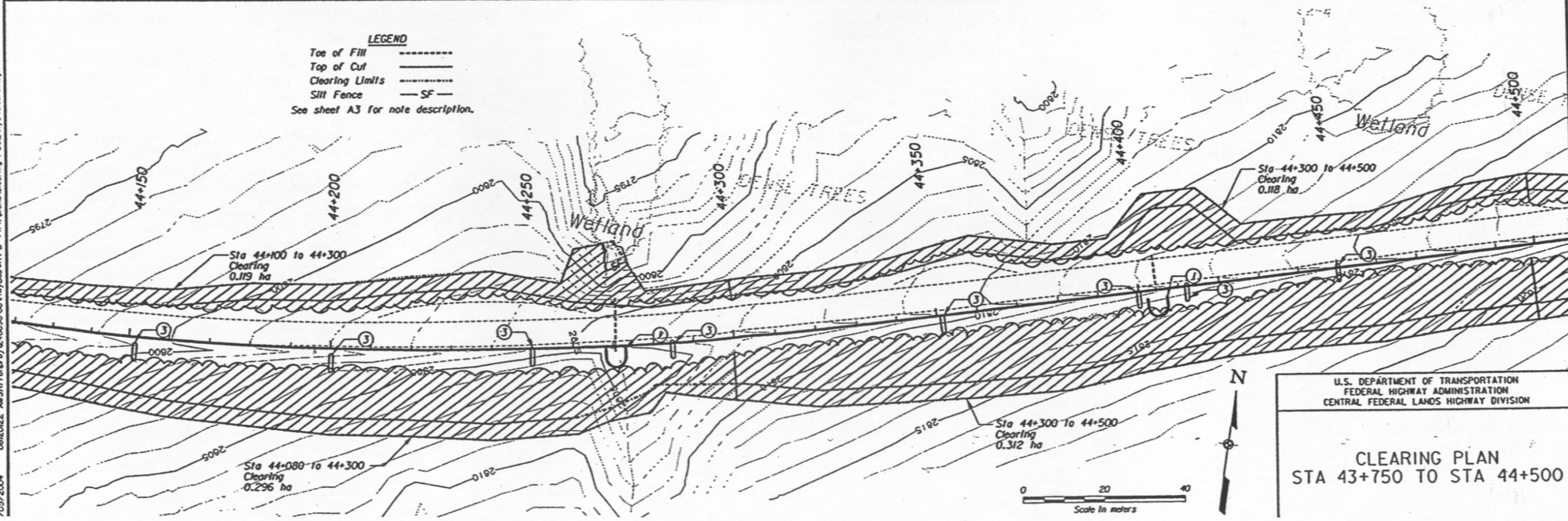
REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-13(B) BEARTOOTH HIGHWAY	C7	C18



LEGEND
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 Top of Cut -----
 Clearing Limits -----
 Silt Fence — SF —
 See sheet A3 for note description.



LEGEND
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 Top of Cut -----
 Clearing Limits -----
 Silt Fence — SF —
 See sheet A3 for note description.

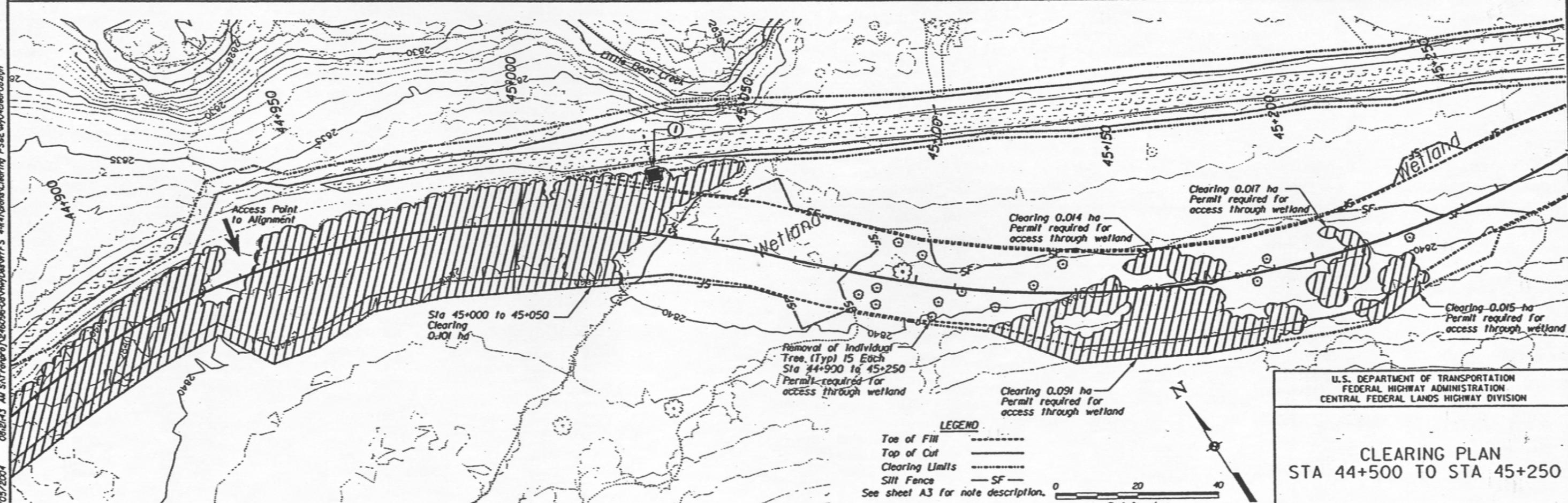
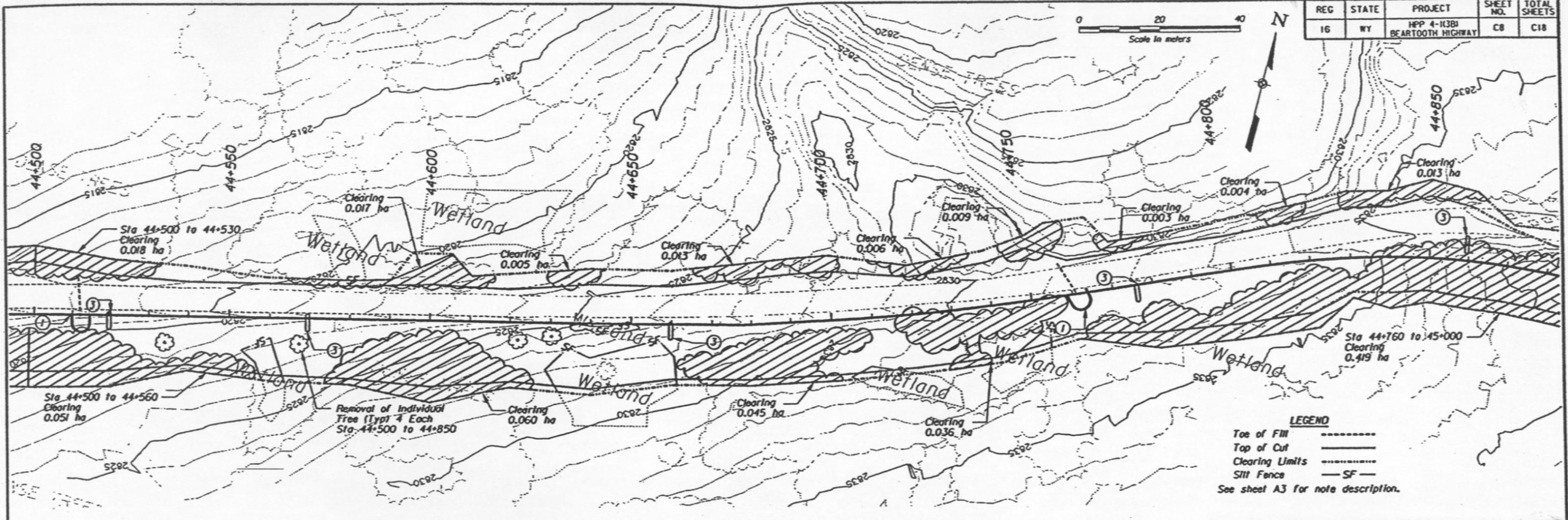


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 43+750 TO STA 44+500

7/05/2004 08:20:22 A:\S:\Transp\1246096-08\Wys\Drawings\Clearing PS&E\wy04clear07.dgn

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-103B1 BEAR TOOTH HIGHWAY	C8	C18

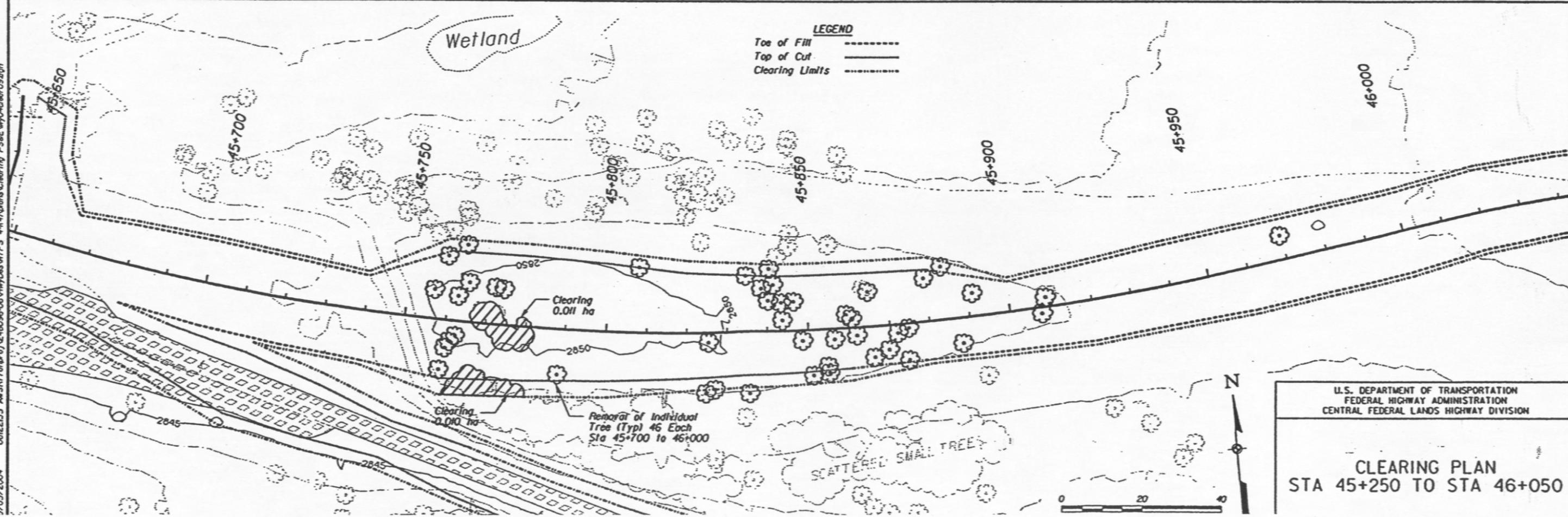
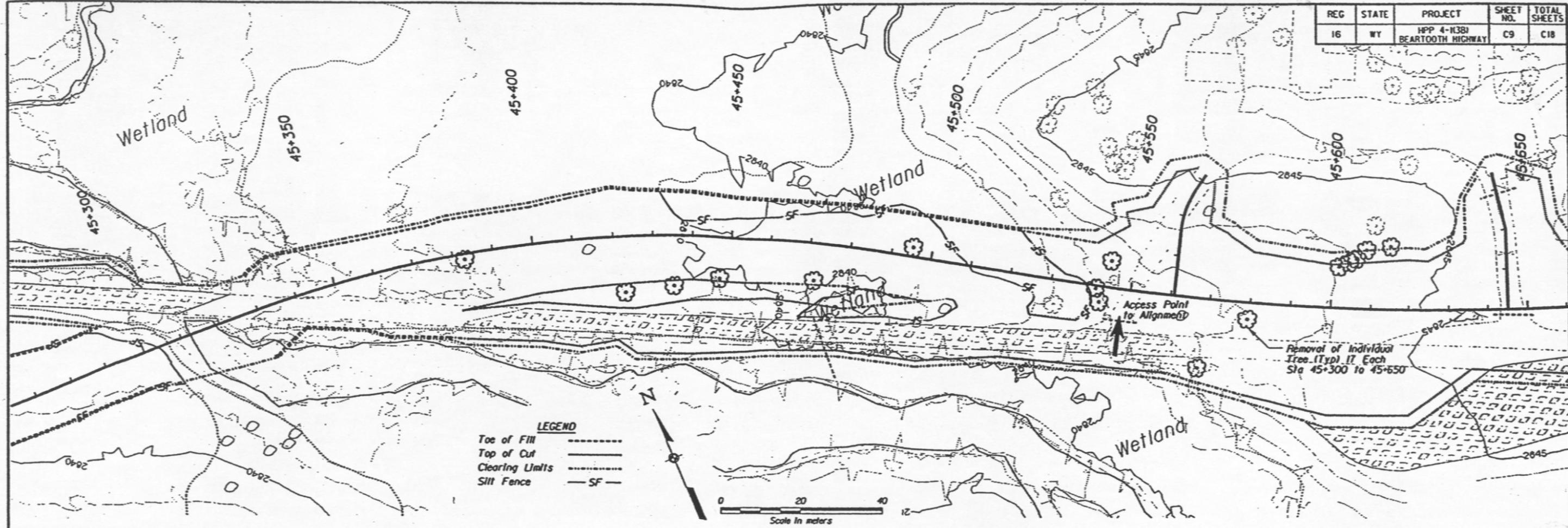


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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 44+500 TO STA 45+250

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-H381 BEAR TOOTH HIGHWAY	C9	C18

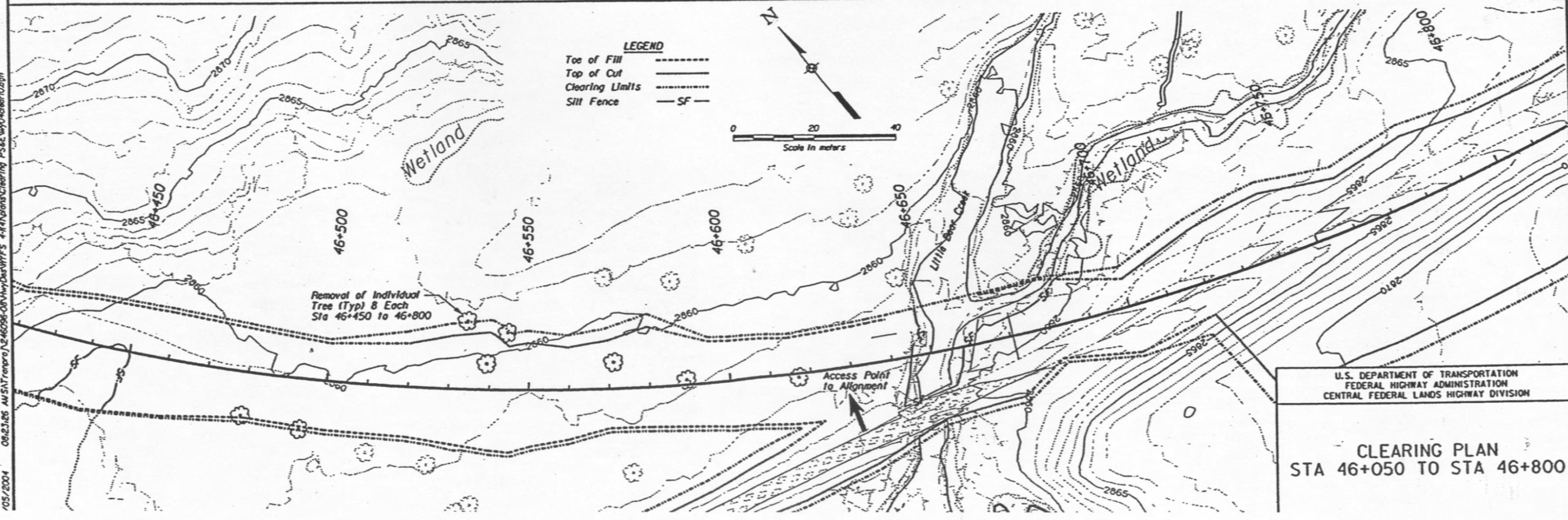
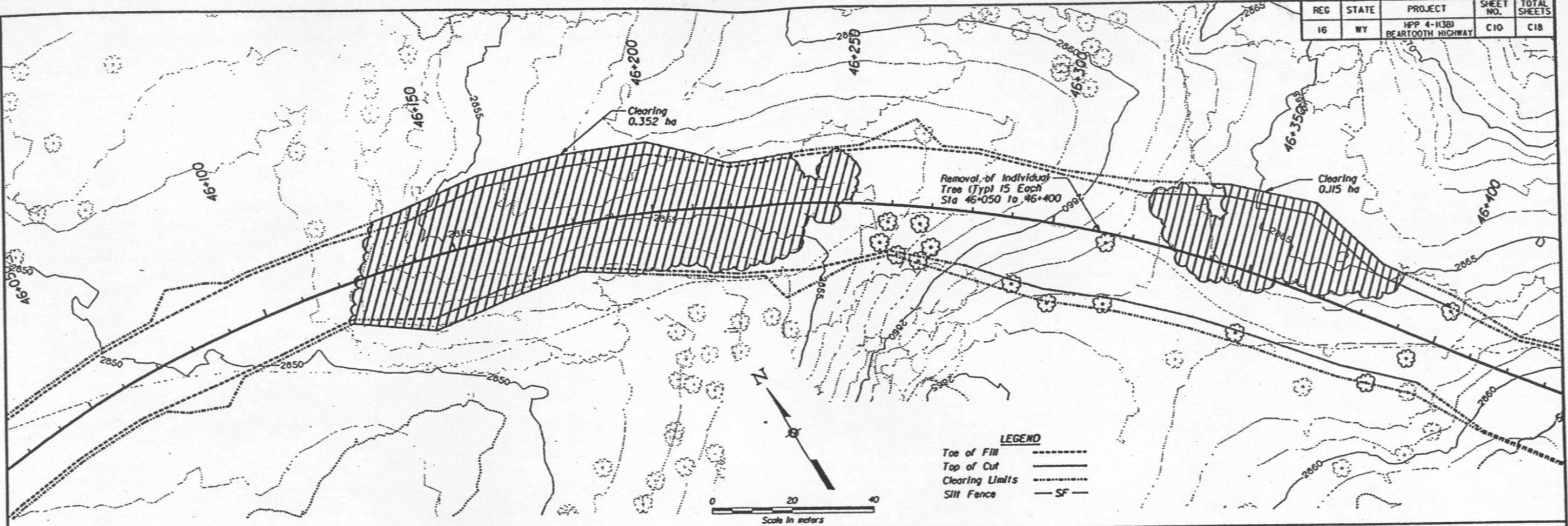


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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 45+250 TO STA 46+050

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	NY	HPP 4-K381 BEARTOOTH HIGHWAY	C10	C18

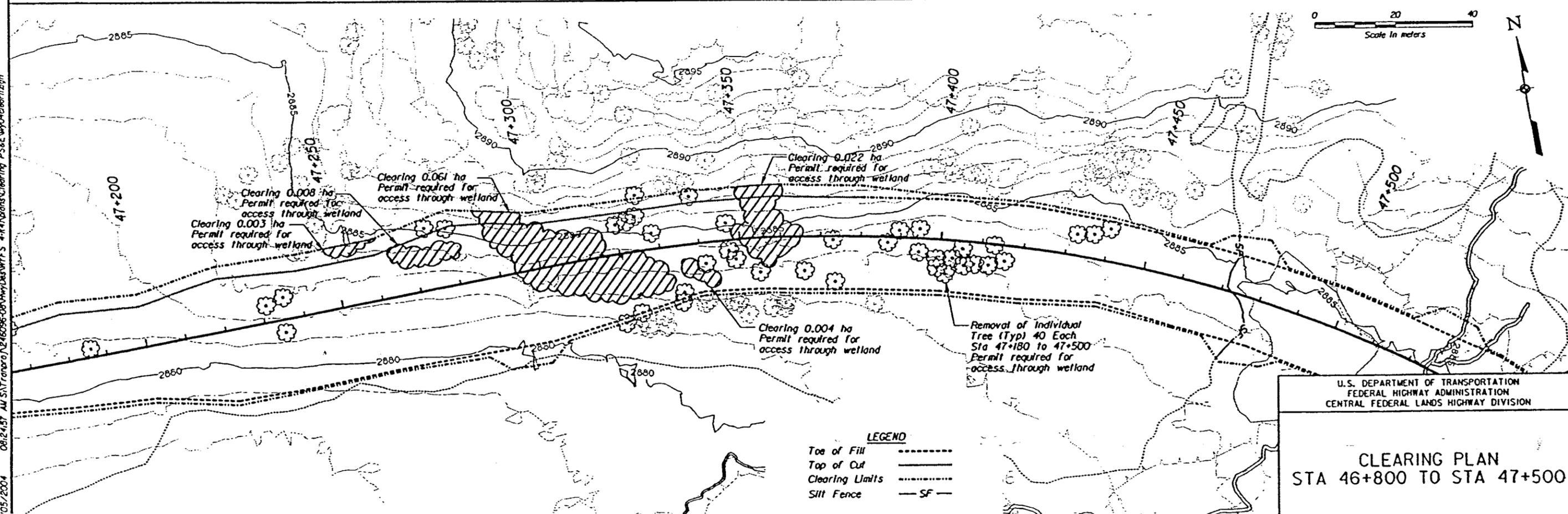
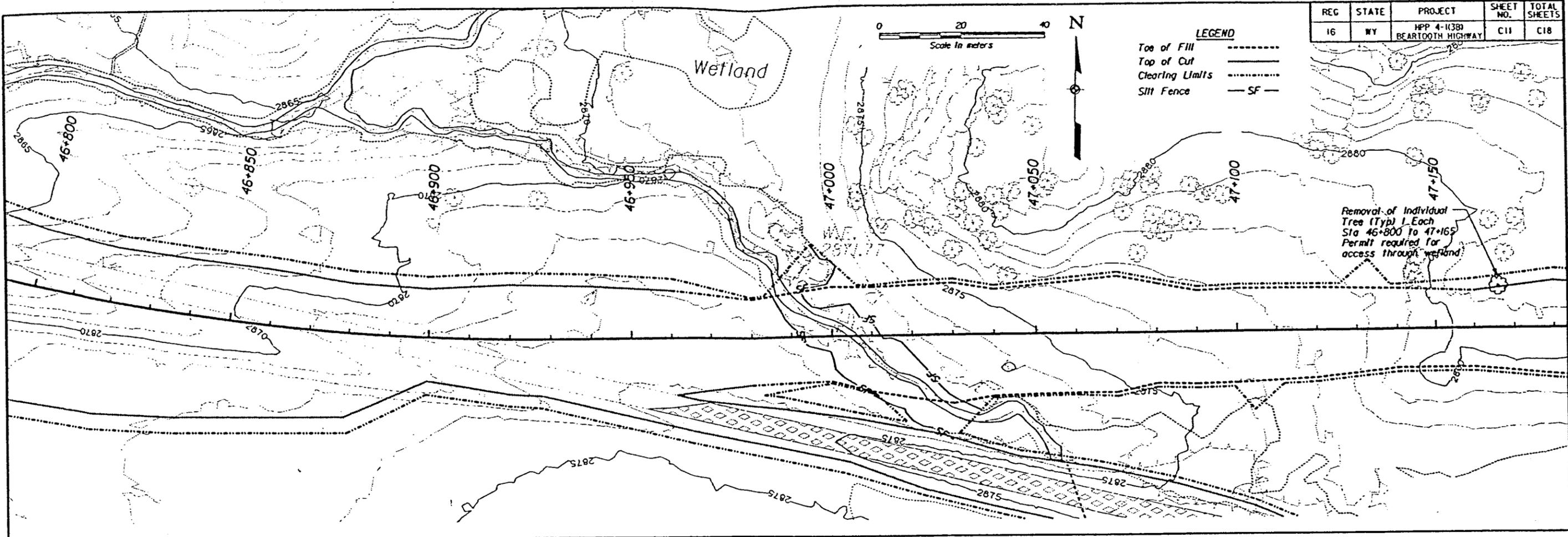


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 46+050 TO STA 46+800

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REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	NY	HPP 4-11380 BEARTOOTH HIGHWAY	C11	C18

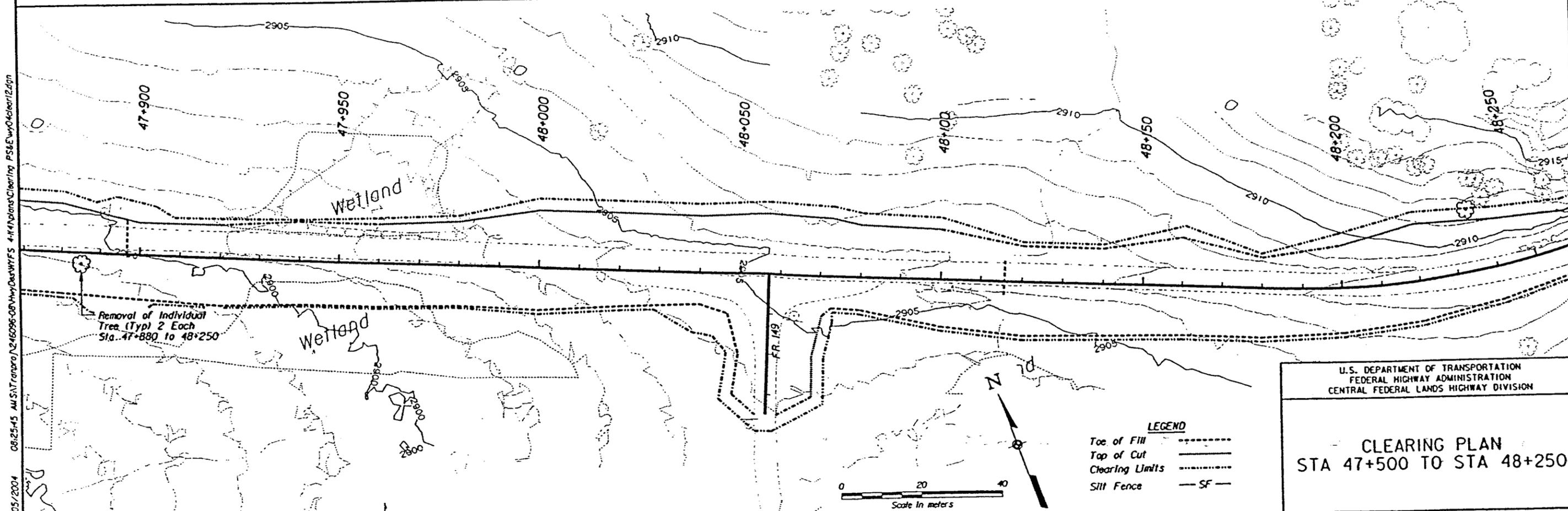
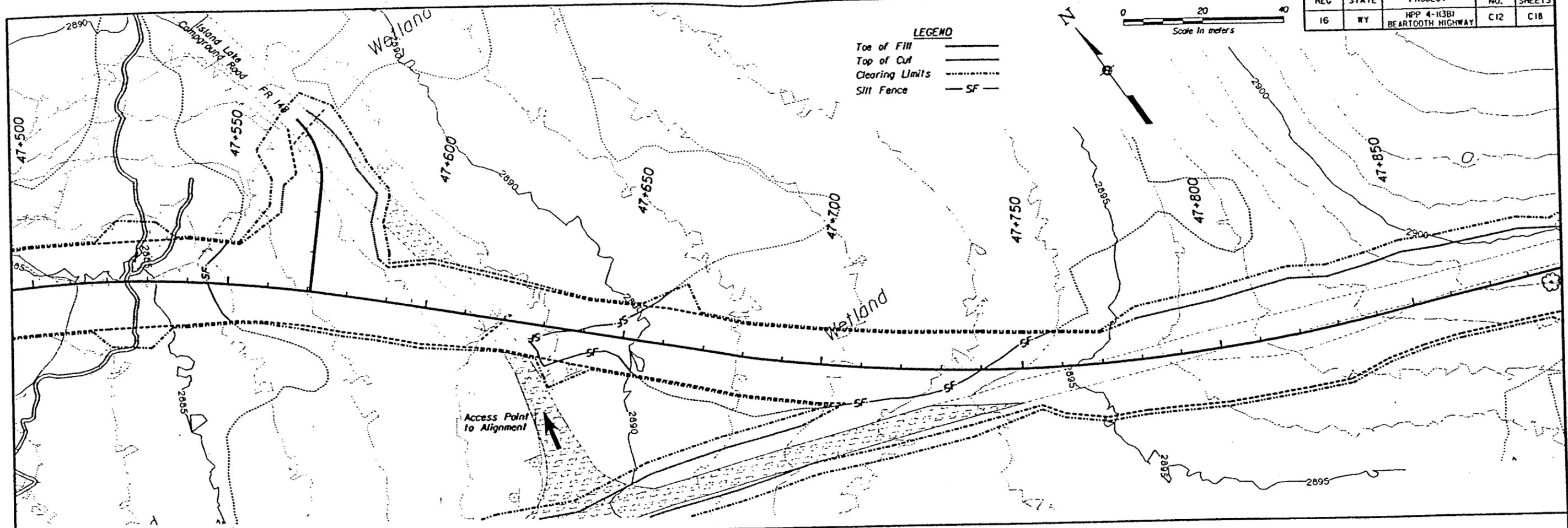


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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 46+800 TO STA 47+500

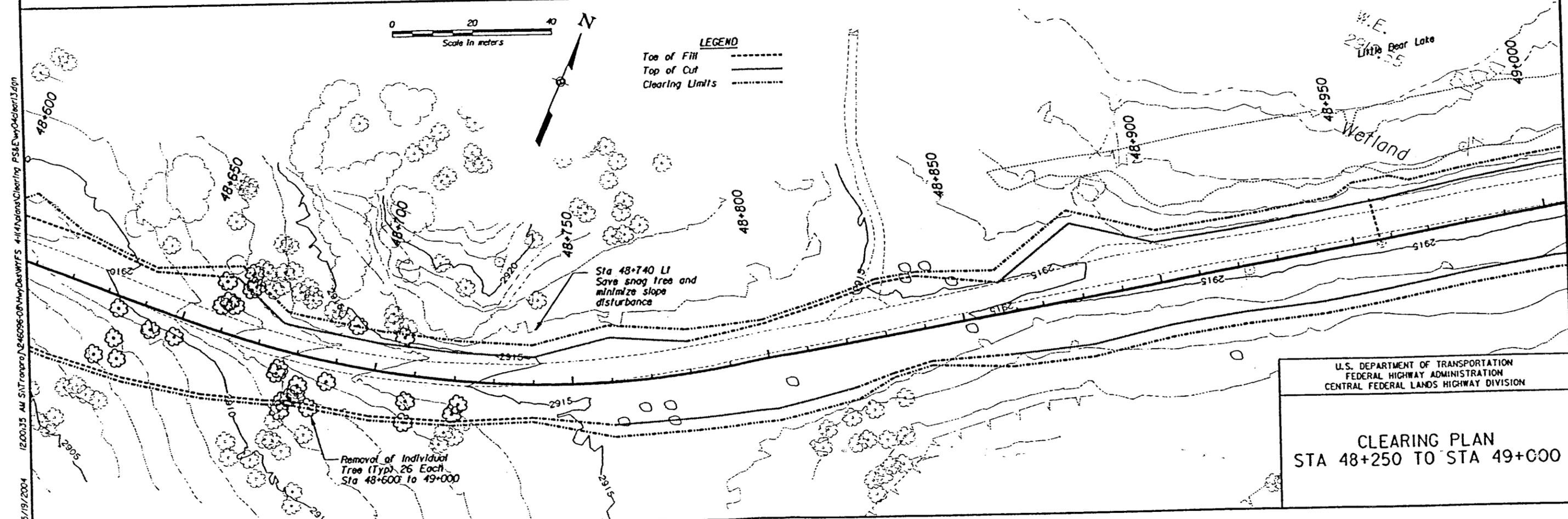
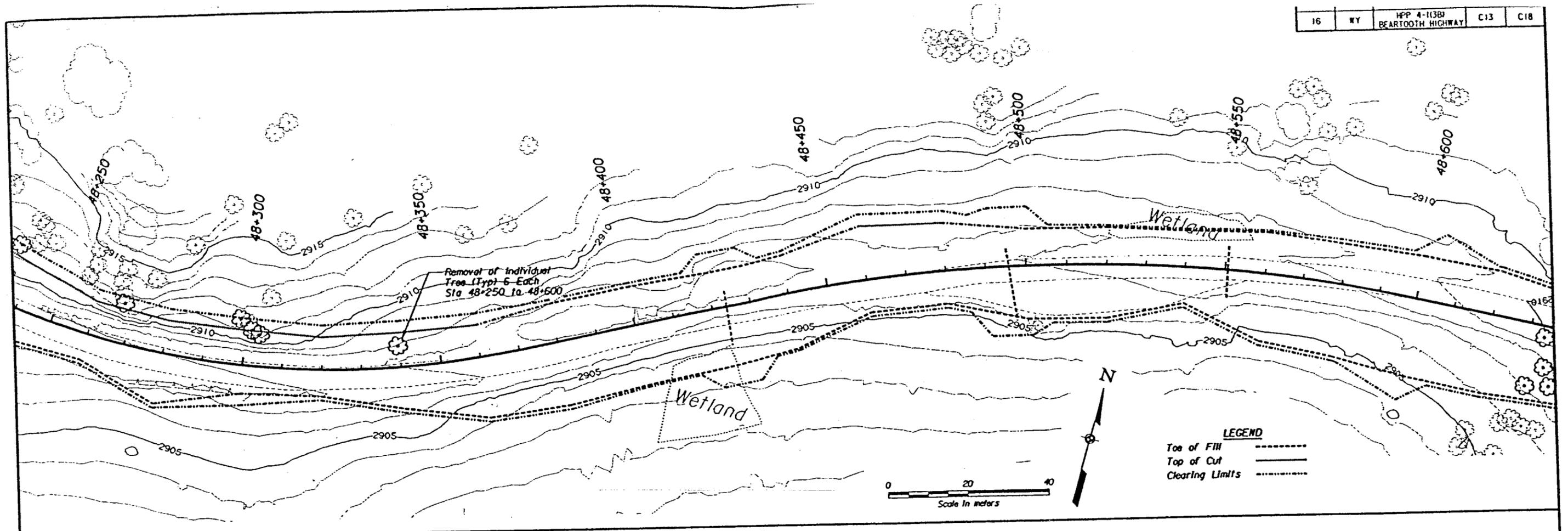
REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-103B1 BEAR TOOTH HIGHWAY	C12	C18



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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
STA 47+500 TO STA 48+250

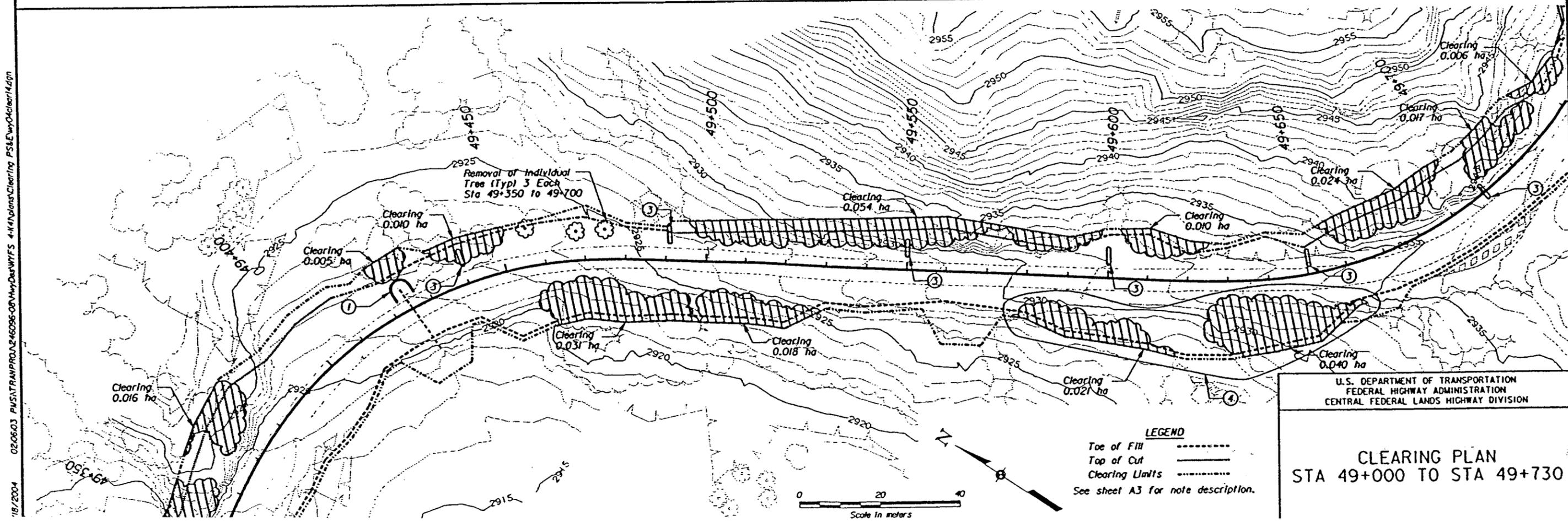
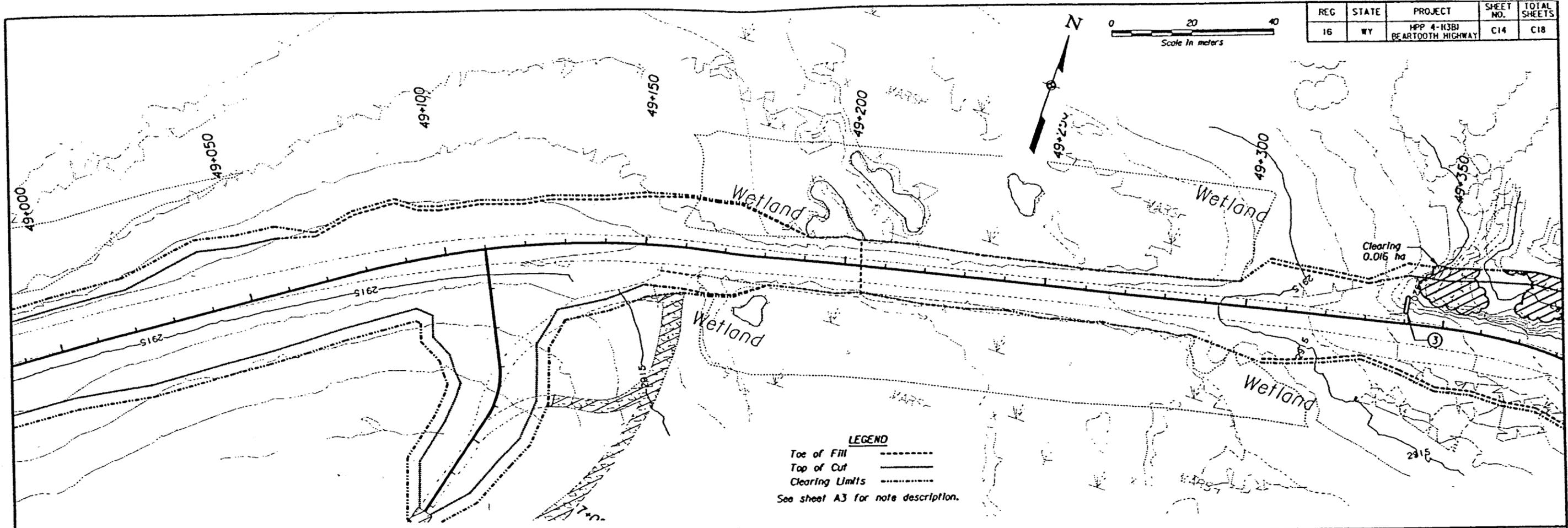


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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 48+250 TO STA 49+000

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-H3B1 BEARTOOTH HIGHWAY	C14	C18

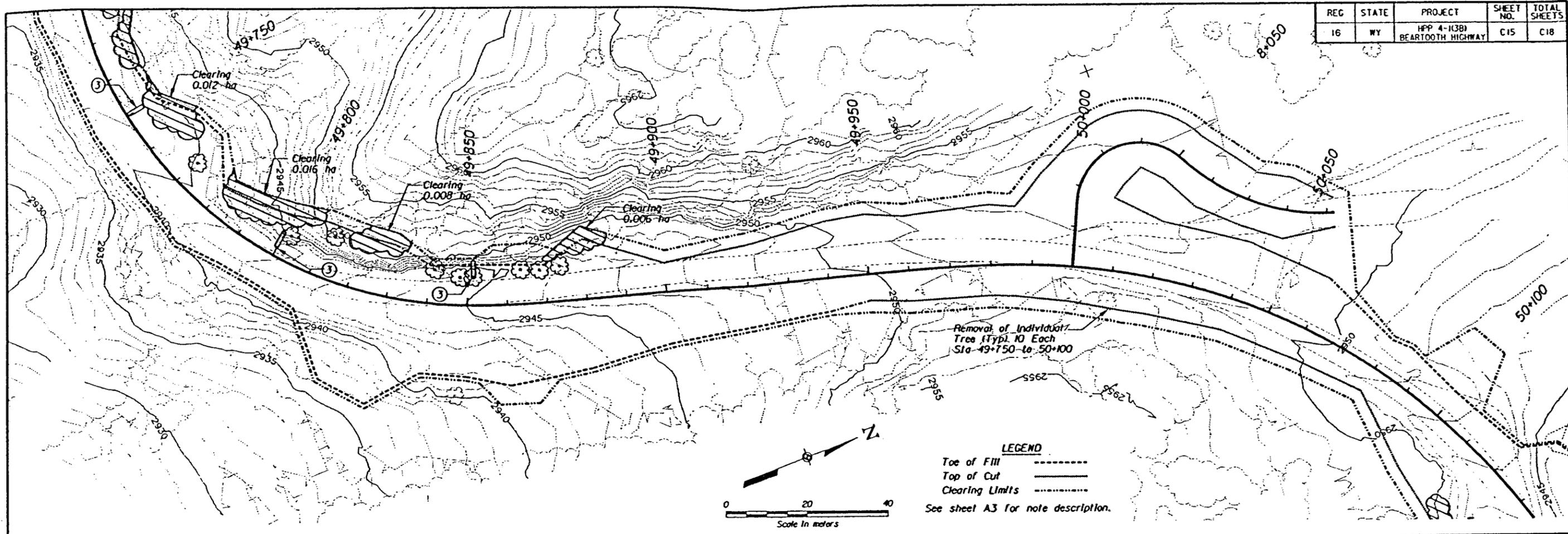


U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 49+000 TO STA 49+730

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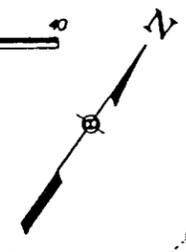
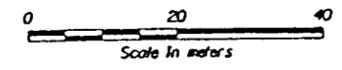
REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-11381 BEARTOOTH HIGHWAY	C15	C18



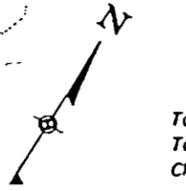
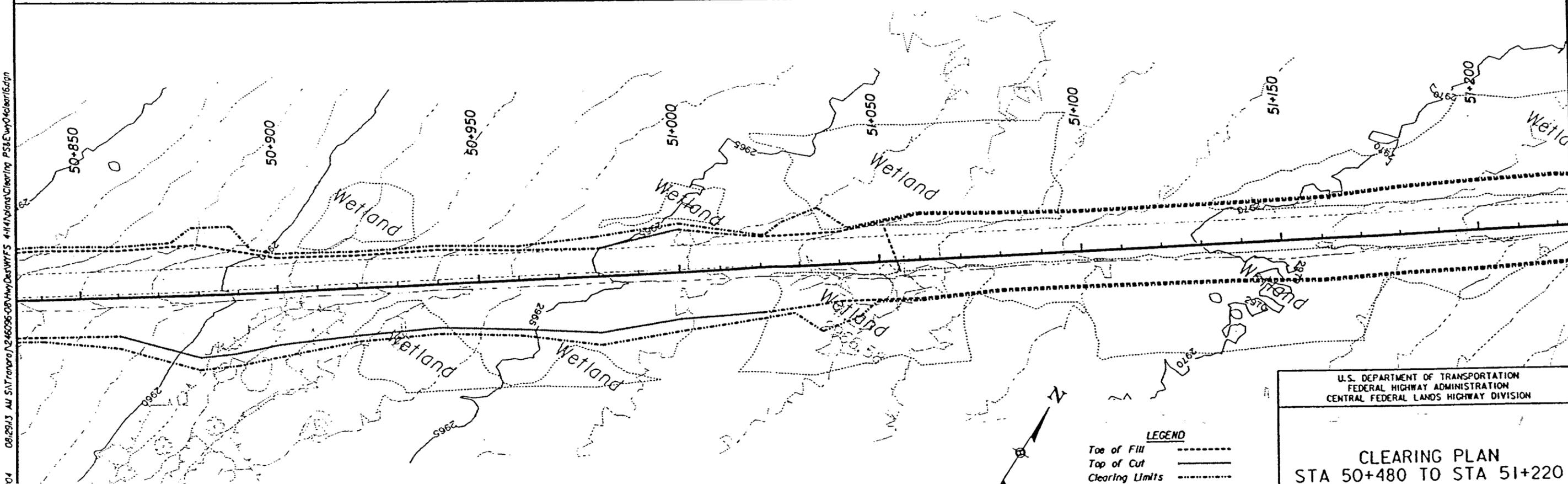
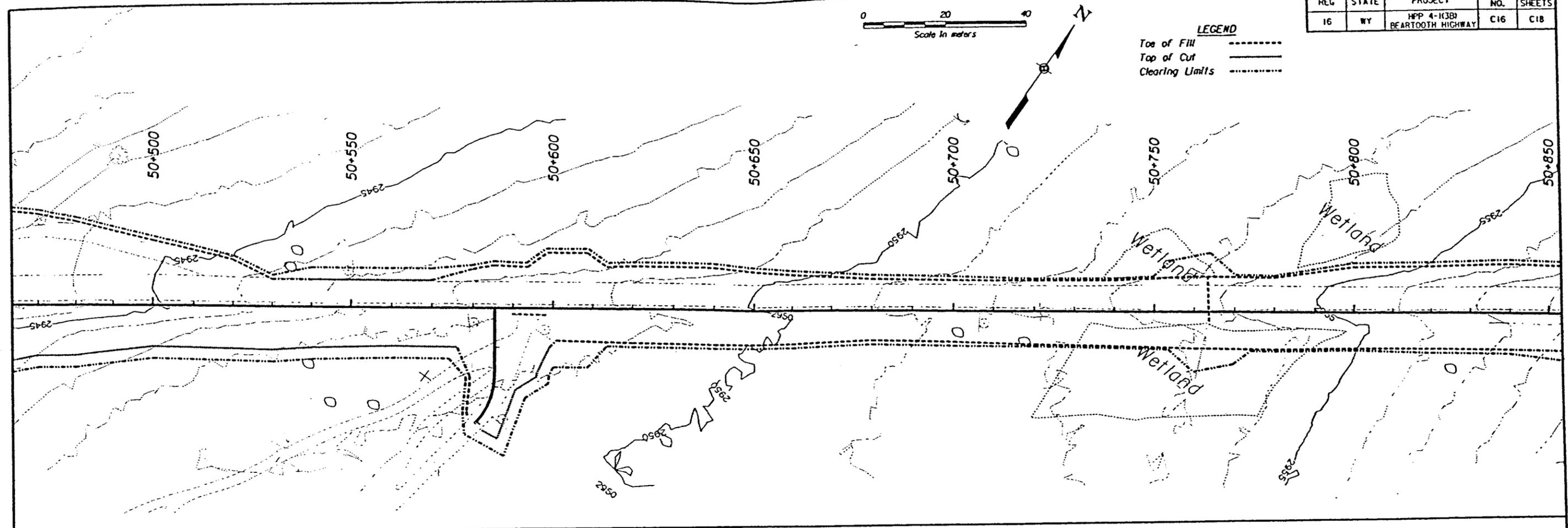
U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
 STA 49+730 TO STA 50+480

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-113B1 BEARTOOTH HIGHWAY	C16	C18



LEGEND
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 Top of Cut -----
 Clearing Limits -----



LEGEND
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 Top of Cut -----
 Clearing Limits -----

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

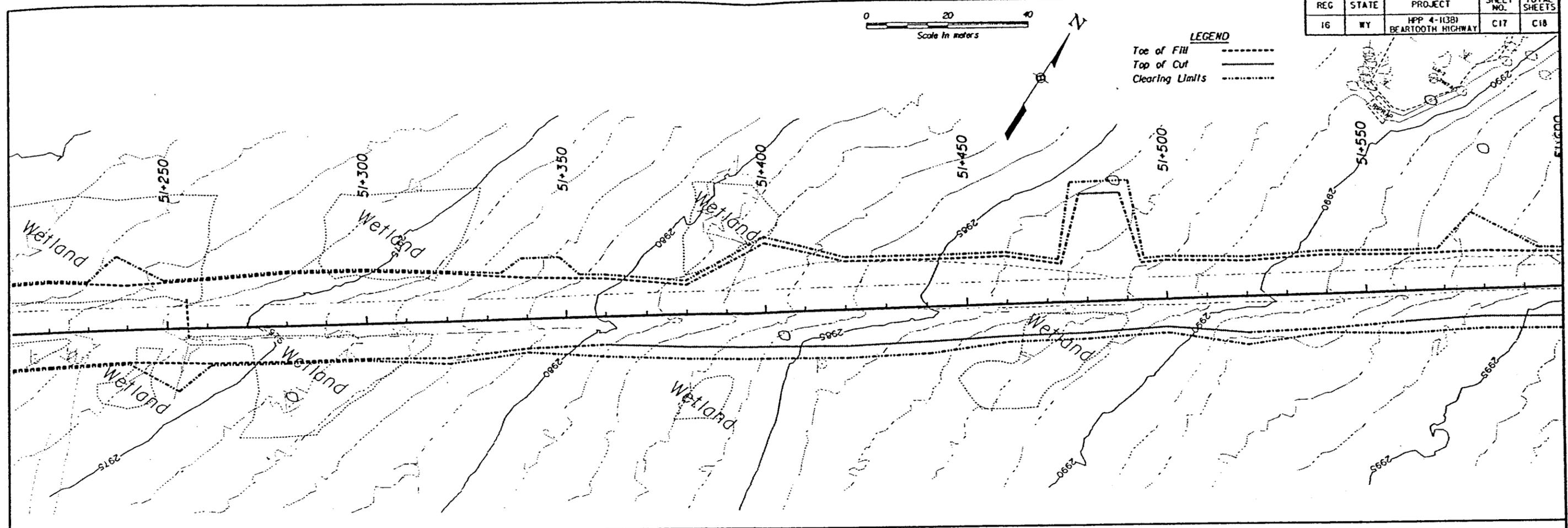
CLEARING PLAN
 STA 50+480 TO STA 51+220

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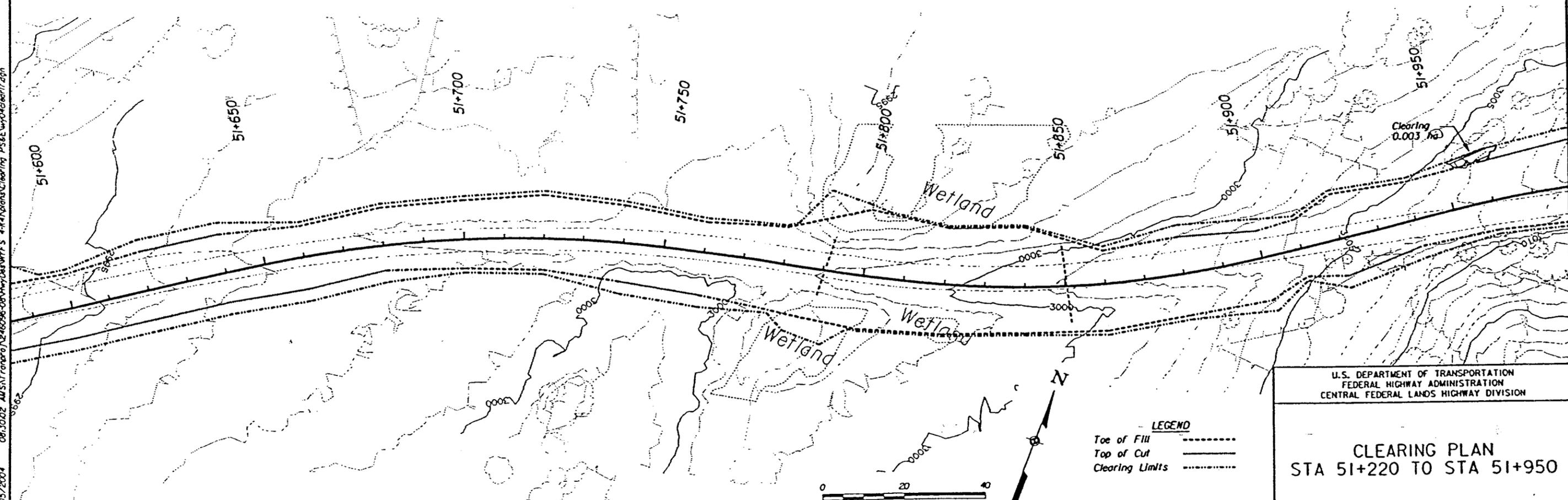
REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-113B1 BEARTOOTH HIGHWAY	C17	C18



LEGEND
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 Top of Cut _____
 Clearing Limits - - - - -



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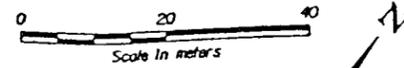


LEGEND
 Toe of Fill -----
 Top of Cut _____
 Clearing Limits - - - - -

U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

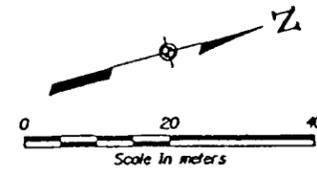
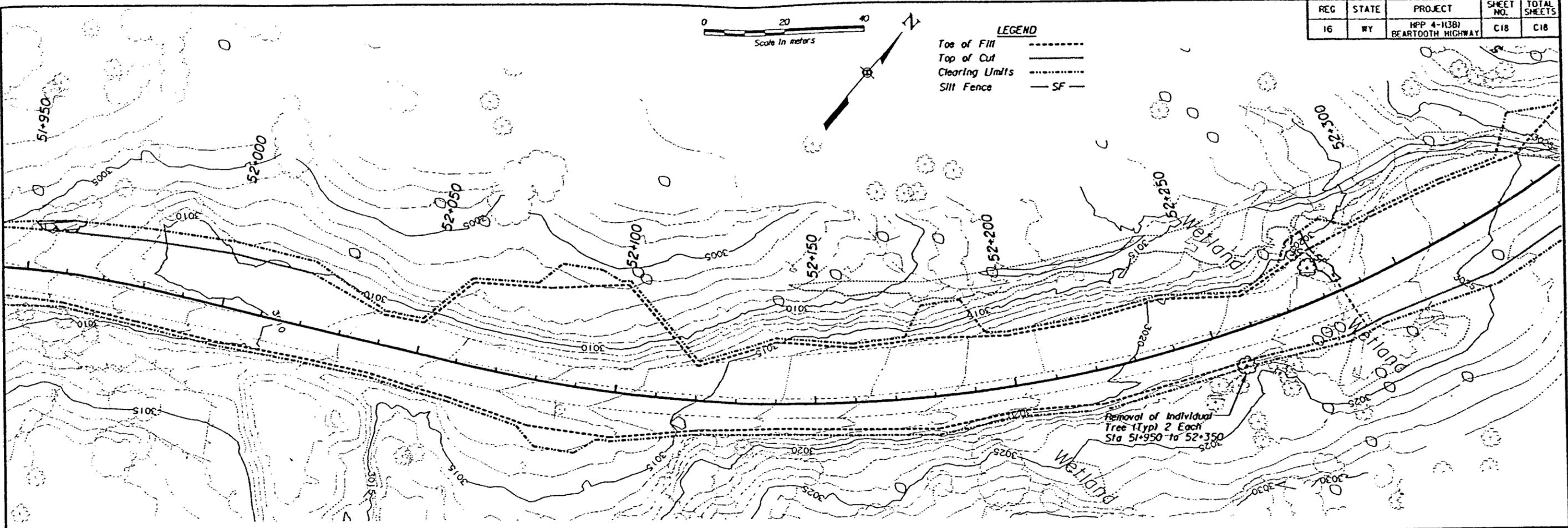
CLEARING PLAN
 STA 51+220 TO STA 51+950

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-1(3B) BEAR TOOTH HIGHWAY	C18	C18



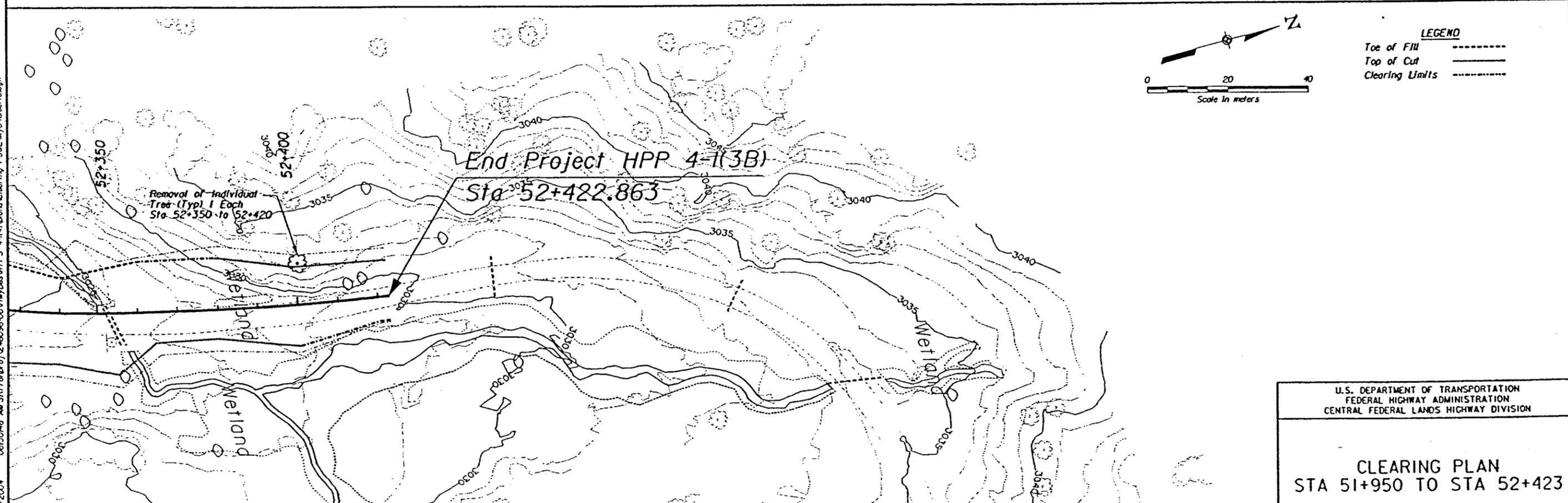
LEGEND

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- Top of Cut =====
- Clearing Limits - - - - -
- Silt Fence — SF —



LEGEND

- Toe of Fill -----
- Top of Cut =====
- Clearing Limits - - - - -



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U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION

CLEARING PLAN
STA 51+950 TO STA 52+423

Authorization ID: CFK112
Contact ID: FED_HWY_ADMIN
Expiration Date: 12/31/2014
Use Code: 511, 522, 814

FS-2700-4 (05/03)
OMB 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
Forest Service
SPECIAL USE PERMIT
AUTHORITY:**

**ORGANIC ADMINISTRATION ACT June 4, 1897, FEDERAL LAND POLICY AND MGMT ACT, AS AMENDED
October 21, 1976**

Federal Highway Administration of Federal Highway Administration, 555 Zang Street, Lakewood, CO 80228 (hereinafter called the Holder) is hereby authorized to use or occupy National Forest System lands, to use subject to the conditions set out below, on the Shoshone National Forest.

This permit covers 354.5 acres, and is described as shown on the location map, Exhibit A, Figures 1-8, attached to and made a part of this permit, and is issued for the purpose of support to the reconstruction of the Beartooth Highway:

Fox Creek Workcamp

NESE Sec. 30, T.58N., R.107W., 60 Acres

Pilot Creek Monitoring Wells

NENE Sec. 4, NWNW Sec. 5, T.57N., R.107W. 35 Acres

Lake Creek Bridge Interpretive Site

SWSW Sec. 8, T.57N., R.106W. 2 Acres

Ghost Creek Materials Source, Staging Area, Construction Office, Batch Plant

SWNW Sec. 14, SENE Sec. 15 T.57N., R.106W. 50 Acres

Staging Area

NESE Sec. 11, T.57N., R.106W. 1 Acres

Clay Butte Lookout

SWNW Sec., 12 T.57N., R.106W 1 Acres

Beartooth Ravine Bridge Interpretive Site/Geo-technical Borings

SENE Sec. 12., T.57N., R.106W. 50 Acres

Beartooth Lake Outlet Bridge Interpretive Site/Geo-technical Borings

SENE Sec. 7., T.57N., R.105W 5 Acres

Beartooth Lake Campground Intersection Improvements and Staging Area

NWNE Sec 7. T., T.57N., R.105W 1 Acre

Little Bear Creek Wetland Mitigation and Monitoring Wells/Geo-technical Borings

SWSW Sec. 4, T.57N., R.105W. 70 Acres
NENW Sec. 9, T. 57N., R.106W.

<u>Top of the World Store Staging Area</u>	
NENW Sec. 9, T.57N., R.105W	1 Acre
<u>Interpretive Site and Parking</u>	
NWNE Sec. 9, T.57N., R.105W	.5 Acre
<u>Wetland Mitigation and Monitoring Wells</u>	
SENE Sec. 9, T.57N., R.105W SWNW, SENW Sec.10, T.57N., R.105W	.5 Acre
<u>Little Bear Creek Geotechnical Borings</u>	
SENE Sec. 9, T.57N., R.105W	.5 Acre
<u>Island Lake Materials Course and Staging Area</u>	
SENE Sec.10, T.57N., R.105W	10 Acres
<u>Intersection Improvements</u>	
SWNE Sec.10, T.57N., R.105W	.5 Acres
<u>Long Lake Staging Area</u>	
NWNE Sec.11, T.57N., R.105W	.5 Acres
<u>Long Lake Intersection Improvements</u>	
NWNE Sec.11, T.57N., R.105W	.5 Acres
<u>Little Bear Lake Staging Area</u>	
NWNE Sec.11, T.57N., R.105W	.5 Acres
<u>Little Bear Lake Geotechnical Borings, Wetland Mitigation, and Monitoring Wells</u>	
NWNE Sec.11, T.57N., R.105W	10 Acres
<u>Long Lake Staging Area 2</u>	
NWNW Sec.12, T.57N., R.105W	.5 Acres
<u>Long Lake Geotechnical Borings, Wetland Mitigation</u>	
NWNW Sec.11, T.57N., R.105W	10 Acres
<u>Wetlands Mitigation</u>	
SWSW Sec.1, T.57N., R.105W SWNW Sec. 6, T.57N., R.104W.	10 Acres
<u>Staging Area</u>	
SWSW Sec.1, T.57N., R.105W	.5 Acres

Interpretive Parking Area

NWSW Sec. 6, T.57N., R.104W. .5 Acres

Frozen Lake Geotechnical Borings

SWNW Sec. 6, T.57N., R.104W. 5 Acres

Intersection Improvements

NWNE Sec. 31, T.58N., R.104W. .5 Acres

Revegetation Test Plots

NWNE Sec. 31, T.58N., R.104W. 10 Acres

Staging Area

NWNE Sec. 31, T.58N., R.104W. .5 Acres

Interpretive Parking Area

NW1/4 Sec. 31, T.58N., R.104W. 2 Acres

Geotechnical Borings

NW ¼ Sec. 31, T.58N., R.104W. 5 Acres

Staging Area and Intersection Improvements

NESW Sec. 29, T.58N., R.104W. .5 Acres

Revegetation Test Plots

NESW Sec. 29, T.58N., R.104W. 10 Acres

The above described or defined area shall be referred to herein as the "permit area".

TERMS AND CONDITIONS

I. AUTHORITY AND GENERAL TERMS OF THE PERMIT

A. Authority. This permit is issued pursuant to the authorities enumerated at Title 36, Code of Federal Regulations, Section 251 Subpart B, as amended. This permit, and the activities or use authorized, shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

B. Authorized Officer. The authorized officer is the Forest Supervisor or a delegated subordinate officer.

C. License. This permit is a license for the use of federally owned land and does not grant any permanent, possessory interest in real property, nor shall this permit constitute a contract for purposes of the Contract Disputes Act of 1978 (41 U.S.C. 611). Loss of the privileges granted by this permit by revocation, termination, or suspension is not compensable to the holder.

D. Amendment. This permit may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary or desirable to incorporate new terms, conditions, and stipulations as may be required by law, regulation, land management plans, or other management decisions.

E. Existing Rights. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

F. Nonexclusive Use and Public Access. Unless expressly provided for in additional terms, use of the permit area is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area, including roads, for any purpose, provided, such use does not materially interfere with the holder's authorized use. A final determination of conflicting uses is reserved to the Forest Service.

G. Forest Service Right of Entry and Inspection. The Forest Service has the right of unrestricted access of the permitted area or facility to ensure compliance with laws, regulations, and ordinances and the terms and conditions of this permit.

H. Assignability. This permit is not assignable or transferable. If the holder through death, voluntary sale or transfer, enforcement of contract, foreclosure, or other valid legal proceeding ceases to be the owner of the improvements, this permit shall terminate.

I. Permit Limitations. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

II. TENURE AND ISSUANCE OF A NEW PERMIT

A. Expiration at the End of the Authorized Period. This permit will expire at midnight on 12/31/2014. Expiration shall occur by operation of law and shall not require notice, any decision document, or any environmental analysis or other documentation.

B. Minimum Use or Occupancy of the Permit Area. Use or occupancy of the permit area shall be exercised at least 60 days each year, unless otherwise authorized in writing under additional terms of this permit.

C. Notification to Authorized Officer. If the holder desires issuance of a new permit after expiration, the holder shall notify the authorized officer in writing not less than six (6) months prior to the expiration date of this permit.

D. Conditions for Issuance of a New Permit. At the expiration or termination of an existing permit, a new permit may be issued to the holder of the previous permit or to a new holder subject to the following conditions:

1. The authorized use is compatible with the land use allocation in the Forest Land and Resource Management Plan.
2. The permit area is being used for the purposes previously authorized.
3. The permit area is being operated and maintained in accordance with the provisions of the permit.
4. The holder has shown previous good faith compliance with the terms and conditions of all prior or other existing permits, and has not engaged in any activity or transaction contrary to Federal contracts, permits laws, or regulations.

E. Discretion of Forest Service. Notwithstanding any provisions of any prior or other permit, the authorized officer may prescribe new terms, conditions, and stipulations when a new permit is issued. The decision whether to issue a new permit to a holder or successor in interest is at the absolute discretion of the Forest Service.

F. Construction. Any construction authorized by this permit may commence by June 20, 2004 and shall be completed by December 31, 2014. If construction is not completed within the prescribed time, this permit may be revoked or suspended.

III. RESPONSIBILITIES OF THE HOLDER

A. Compliance with Laws, Regulations, and other Legal Requirements. The holder shall comply with all applicable Federal, State, and local laws, regulations, and standards, including but not limited to, the Federal

Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 et seq., and other relevant environmental laws, as well as public health and safety laws and other laws relating to the siting, construction, operation, and maintenance of any facility, improvement, or equipment on the property.

B. Plans. Plans for development, layout, construction, reconstruction, or alteration of improvements on the permit area, as well as revisions of such plans, must be prepared by a qualified individual acceptable to the authorized officer and shall be approved in writing prior to commencement of work. The holder may be required to furnish as-built plans, maps, or surveys, or other similar information, upon completion of construction.

C. Maintenance. The holder shall maintain the improvements and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this authorization. If requested, the holder shall comply with inspection requirements deemed appropriate by the authorized officer.

D. Hazard Analysis. The holder has a continuing responsibility to identify all hazardous conditions on the permit area which would affect the improvements, resources, or pose a risk of injury to individuals. Any non-emergency actions to abate such hazards shall be performed after consultation with the authorized officer. In emergency situations, the holder shall notify the authorized officer of its actions as soon as possible, but not more than 48 hours, after such actions have been taken.

E. Change of Address. The holder shall immediately notify the authorized officer of a change in address.

F. Change in Ownership. This permit is not assignable and terminates upon change of ownership of the improvements or control of the business entity. The holder shall immediately notify the authorized officer when a change in ownership or control of business entity is pending. Notification by the present holder and potential owner shall be executed using Form SF-299 Application for Transportation and Utility Systems and Facilities of Federal Lands, or Form FS-2700-3a, Holder Initiated Revocation of Existing Authorization, Request for a Special Use Permit. Upon receipt of the proper documentation, the authorized officer may issue a permit to the party who acquires ownership of, or a controlling interest in, the improvements or business entity.

IV. LIABILITY

For purposes of this section, "holder" includes the holder's heirs, assigns, agents, employees, and contractors.

A. The holder assumes all risk of loss to the authorized improvements.

B. Damage to National Forest Interests, Property, or Resources. The holder, as an agency of the United States, is limited by Federal law as to the assumption of liability for its acts or omissions. The holder does agree, within its legal limitations, and limitations of appropriations, to be responsible for all costs of damages and injury to persons, personal property, and land caused by its operations and activities under the terms of this permit. The holder further agrees, to the extent legally permissible, to use its appropriations and resources as required to pay any awards or claims, and to repair damages to the land within the permit area. It is the intent of this provision that the appropriations of the Forest Service be shielded from burdens, other than administrative costs, which may occur as a result of the activities by the holder under the terms of this permit.

C. With respect to roads, the holder shall be proportionally liable for damages to all roads and trails of the United States open to public use caused by the holder's use to the same extent as provided above, except that liability shall not include reasonable and ordinary wear and tear.

E. The Forest Service has no duty to inspect the permit area or to warn of hazards and, if the Forest Service does inspect the permit area, it shall incur no additional duty nor liability for identified or non-identified hazards. This covenant may be enforced by the United States in a court of competent jurisdiction.

V. TERMINATION, REVOCATION, AND SUSPENSION

A. General. For purposes of this permit, "termination", "revocation", and "suspension" refer to the cessation of uses and privileges under the permit.

"Termination" refers to the cessation of the permit under its own terms without the necessity for any decision or action by the authorized officer. Termination occurs automatically when, by the terms of the permit, a fixed or agreed upon condition, event, or time occurs. For example, the permit terminates at expiration. Terminations are not appealable.

"Revocation" refers to an action by the authorized officer to end the permit because of noncompliance with any of the prescribed terms, or for reasons in the public interest. Revocations are appealable.

"Suspension" refers to a revocation which is temporary and the privileges may be restored upon the occurrence of prescribed actions or conditions. Suspensions are appealable.

B. Revocation or Suspension. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulations.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to otherwise exercise the privileges granted.

C. Opportunity to Take Corrective Action. Prior to revocation or suspension for cause pursuant to Section V (B), the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

D. Removal of Improvements. Prior to abandonment of the improvements or within a reasonable time following revocation or termination of this authorization, the holder shall prepare, for approval by the authorized officer, an abandonment plan for the permit area. The abandonment plan shall address removal of improvements and restoration of the permit area and prescribed time frames for these actions. If the holder fails to remove the improvements or restore the site within the prescribed time period, they become the property of the United States and may be sold, destroyed or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

VI. FEES

Fees for this use have been exempted or waived in full pursuant to 36 CFR 251.57, or revisions thereto, and direction in FSH 2709.11, chapter 30.

VII. OTHER PROVISIONS

A. Members of Congress. No Member of or Delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. Appeals and Remedies. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

C. Superior Clauses. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

D. Nondiscrimination in Employment and Services (B1). During the performance of this authorization, the holder agrees:

1. In connection with the performance of work under this authorization, including construction, maintenance, and operation of the facility, the holder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, or disability. (Ref. Title VII of the Civil Rights Act of 1964, as amended).
2. The holder and employees shall not discriminate by segregation or otherwise against any person on the basis of race, color, religion, sex national origin, age, or disability, by curtailing or refusing to furnish

accommodations, facilities, services, or use privileges offered to the public generally. (Ref. Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; Title IX of the Education Amendments, and the Age Discrimination Act of 1975).

3. The holder shall include and require compliance with the above nondiscrimination provisions in any subcontract made with respect to the operations under this authorization.

4. When furnished by the Forest Service, signs setting forth this policy of nondiscrimination will be conspicuously displayed at the public entrance to the premises, and at other exterior or interior locations as directed by the Forest Service.

5. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States of the State in which the breach or violation occurs.

E. Explosives (B29).

1. Only exploding bridgewire (EBWs) shall be used for blasting except for hand charging of snow release zones.

2. In the use of explosives, the holder shall exercise the utmost care not to endanger life or property and shall comply with the requirements of the Forest Service. The holder shall be responsible for any and all damages resulting from the use of explosives and shall adopt precautions that will prevent damage to surrounding objects. The holder shall furnish and erect special signs to warn the public of blasting operations. Such signs shall be placed and maintained so as to be clearly evident to the public during all critical periods of the blasting operations, and shall include a warning statement to have radio transmitters turned off.

3. All storage places for explosives shall be marked "DANGEROUS-EXPLOSIVES." The method of storing and handling explosives shall conform to procedures contained in the "Blasters Guide EM-7100-14," and Title 27, Code of Federal Regulations, parts 1 to 199, Alcohol, Tobacco Products, and Firearms (Bureau of Alcohol, Tobacco and Firearms (BATF)).

4. When using explosives, the holder shall adopt precautions which will prevent damage to landscape features and other surrounding objects. When directed by the Forest officer in charge, trees within an area designated to be cleared shall be left as a protective screen for surrounding vegetation during blasting operations. Trees so left shall be removed and disposed of after blasting has been completed. When necessary, and at any point of special danger, the holder shall use suitable mats or some other approved method to smother blasts.

F. Drinking Water Systems (B38).

1. The holder, as the water supplier and owner or operator of the drinking water system, is responsible for compliance with all applicable Federal, State, and local drinking water laws and regulations for the operation and maintenance of a public water system. This includes, but is not limited to, developing, operating, and maintaining the system, and conducting drinking water testing and taking the appropriate corrective and follow-up actions in accordance with Federal, State, and any other applicable requirements. For the purposes of this authorization, public water systems are defined in the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), and in the National Primary Drinking Water Regulations, Title 40, Code of Federal Regulations, part 141 (40 CFR part 141), or by State regulations if more stringent.

2. When the permit holder operates Federally owned systems (for example, when the permit is authorized under the Granger-Thye Act), the holder shall meet additional requirements for public and nonpublic water systems consistent with FSM 7420. Requirements under FSM 7420 applicable to the permit holder are set forth in an appendix to the permit entitled "Operation of Federally Owned Drinking Water Systems" (Form FS-2700-4h-Appendix F).

3. For Federally owned systems, the holder shall notify and consult with the Forest Service within 24 hours or on the next business day after notification by the laboratory of a sample that tests positive for microbiological contamination. The holder shall notify and consult with the Forest Service within 48 hours of notification of a maximum contaminant level violation or an acute violation.

4. The holder shall retain all records as required by applicable laws and regulations. The holder agrees to make the records available to the Forest Service and to any other regulatory agency authorized to review Forest Service activities. Copies of microbiological test results for Federally owned water systems shall be forwarded monthly to the Forest Service by the 15th of the month following the sampling date. Copies of other required records for Federally owned systems shall be forwarded annually to the Forest Service within 15 days of the end of the operating season for seasonal sites or within 15 days of the end of the calendar year for year-round operations. The holder shall surrender all records for a Federally owned system to the Forest Service upon permit termination or revocation.

5. For Federally owned systems, the holder shall provide the name of the water system operator in writing to the Forest Service and notify the authorized officer within 72 hours of a change in personnel.

G. Site Development Schedule (C1). The holder shall prepare by **August 1, 2004** a schedule for the progressive development and installation of facilities on the permitted site. This schedule shall be made a part of this authorization. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met and that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date.

All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least forty-five (45) days before the construction date stipulated in the development schedule.

H. Site Plan (C2). The holder shall prepare site plans to show the location of all buildings, service areas, roads, and structures. Such plans shall be on a scale of 1 inch = 50 feet with 2 foot contour intervals. The holder is encouraged to consult with the authorized officer during the preparation of the site plan to ensure that it is adequate. No construction shall be undertaken by the holder prior to site plan approval.

I. Removal and Planting of Vegetation and Other Resources (D5). The holder shall obtain prior written approval from the authorized officer before removing or altering vegetation or other resources. The holder shall obtain prior written approval from the authorized officer before planting trees, shrubs, or other vegetation within the authorized area.

J. Revegetation of Ground Cover and Surface Restoration (D9). The holder shall be responsible for prevention and control of soil erosion and gulying on lands covered by this authorization and adjacent thereto, resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall so construct permitted improvements to avoid the accumulation of excessive heads of water and to avoid encroachment on streams. The holder shall revegetate or otherwise stabilize all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use and shall construct and maintain necessary preventive measures to supplement the vegetation.

K. Timber Payment (D17). All National Forest timber cut or destroyed in the construction of the permitted improvements shall be paid for at current stumpage rates for similar timber in the National Forest. Young-growth timber below merchantable size will be paid for at current damage-appraisal value; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as necessary or as the Forest Service may direct.

L. Pesticide Use (D23). Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. A request for approval of planned uses of pesticides will be submitted annually by the holder on the due date established by the authorized officer. The report will cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review will be provided in the form specified. Exceptions to this schedule

may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time an annual report was submitted.

Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on National Forest System lands. Label instructions will be strictly followed in the application of pesticides and disposal of excess materials and containers.

M. Authorization Termination of Withdrawn Land (E11). Any lands described in this authorization which have been withdrawn for waterpower purposes under the Act of March 3, 1879, or Act of June 25, 1910 (or are embraced in an application or license under the Federal Power Act of June 10, 1920), or have been withdrawn under the Reclamation Act of June 17, 1902, are subject at any time to use in connection with the development of hydropower or for reclamation purposes. This authorization, therefore, is issued with the specific understanding that (1) its use shall not interfere with such hydropower or reclamation development and that (2) the authorization may be, if necessary, terminated upon ninety (90) days notice when in the judgment of the Federal Energy Regulatory Commission, or of the Bureau of Reclamation in the event of reclamation withdrawals, the lands occupied are needed for use in connection with the generation of hydroelectric power, reclamation developments, or other purposes contemplated by the act or acts under which the lands have been withdrawn. No claim shall be made against the United States or power licensees for or on account of prospective profits or for any injury or damage to properties, improvements, or operations due to such development. The holder will be allowed ninety (90) days in which to remove the improvements.

N. Fire Equipment (F7). The holder shall install fire extinguishers and firefighting apparatus of types, of capacities, in numbers, and at locations approved by the authorized officer. This equipment shall be in readiness at all times for immediate use, and shall be tested each year, at such times as may be required by the authorized officer.

O. Protection of Habitat of Endangered, Threatened, and Sensitive Species (X8). Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act of 1973, as amended, or as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this authorization, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the authorization holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

P. Archaeological-Paleontological Discoveries (X17). The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this authorization, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the holder.

Q. Improvement Relocation (X33). This authorization is granted with the express understanding that should future location of United States Government-owned improvements or road rights-of-way require the relocation of the holder's improvements, such relocation will be done by, and at the expense of, the holder within a reasonable time as specified by the authorized officer.

R. Water Rights (X74). This authorization does not convey any legal interest in water rights as defined by applicable State law.

S. Disputes (X96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 251, Subpart C, or revisions thereto.

T. Solid and Hazardous Waste Disposal (R2-B-3). During the term of this authorization, the Holder shall consult with the Environmental Protection Agency and shall comply with all applicable laws and regulations regarding "solid waste" and "hazardous waste" under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC 6901).

U. Alteration of Government Improvements (D-16) If during the term of this permit any Government owned improvements are altered in any way, the material, equipment, fixtures or other appurtenances that are affixed to or made a part of those improvements in connection with the alteration shall become the property of the United States, regardless of whether the work is performed by the holder or any other party. The holder shall not be entitled to any compensation for that property, other than to the extent it qualifies for fee offset.

V. Operating Plan (C-8)

The holder shall provide an Operating Plan. The plan shall be prepared in consultation with the authorized officer or designated representative and cover operation and maintenance of facilities, dates or season of operation, and other information required by the authorized officer to manage and evaluate the occupation and/or use of National Forest System lands. The provisions of the Operating Plan and the annual revisions shall become a part of this authorization and shall be submitted by the holder and approved by the authorized officer or their designated representative(s). This Operating Plan is hereby made a part of the authorization.

W. **SH - X2 - Grizzly Bear Protection**

This special use authorization is for the use of land which is part of the habitat of the grizzly bear. The following conditions under the Endangered Species Act of 1973, 16 U.S.C. 1531, apply to this special use authorization:

1. The authorized officer may order an immediate temporary suspension of all human activity permitted by this authorization. Further, the authorization may be revoked or terminated when, in his/her judgment, such action is necessary to prevent confrontation or conflict between humans and grizzly bears. The holder shall immediately comply with such action. The United States shall not be liable for any consequences from such suspension, revocation, or termination. Such suspension, revocation, or termination may be appealed to the next higher level as provided in 36 CFR 217 or 251.
2. The holder, his/her agents, employees, contractors, and subcontractors will comply with the requirements of the Grizzly Bear Management and Protection Plan (which is a required part of the Operating Plan) in the conduct of any and all activities authorized. The authorized officer may review and revise the plan as needed.
3. The holder assumes full responsibility and shall hold the United States harmless from any and all claims by him/her or by third parties for any damage to life or property arising from the activities authorized by this special use authorization and encounters with grizzly bears, or from suspension, revocation, or termination of activities authorized by this special use authorization.
4. Intentional or negligent acts by the holder, his/her agents, employees, contractors, and subcontractors that result in injury or death of a grizzly bear will be cause for revocation or termination of this authorization in whole or part.
5. Failure to comply with provision 1, 2 or 3 may result in suspension, revocation, or termination of this authorization in whole or part and may cause criminal action to be taken against the holder under provisions of the Endangered Species Act of 1973, as amended, or other applicable authority.

The Grizzly Bear Management and Protection Plan provided for in paragraph 2 will address the following actions, guidelines, and procedures to assure compliance with regulations and best management practices in order to prevent human/bear conflicts and to minimize injuries if involved in an encounter with a bear:

1. Bear-resistant storage facilities available
2. Human Food handling and storage procedures
3. Livestock/pet food handling and storage procedures
4. Garbage & refuse handling and disposal procedures
5. Game carcass handling and storage procedures
6. Livestock carcass disposal procedures

- 7. Human safety awareness training, human/bear conflict prevention procedures, and encounter procedures
- 8. Human activity restrictions by activity, area, season, etc.

V. Area Access (X-19)

The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the permit or with the reasonable exercise and enjoyment by the holder of the privileges thereof.

W. Implied Permission (X-3)

Nothing in this permit shall be construed to imply permission to build or maintain any structure not specifically named on the face of this permit, or approved by the authorized officer in the form of a new permit, or permit amendment.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection on information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

This permit is accepted subject to the conditions set out above.

HOLDER NAME: Federal Highway Administration
Central Federal Lands Highway Division

U.S. DEPARTMENT OF AGRICULTURE
Forest Service

By: Bert J. McCauley
(Holder Signature)

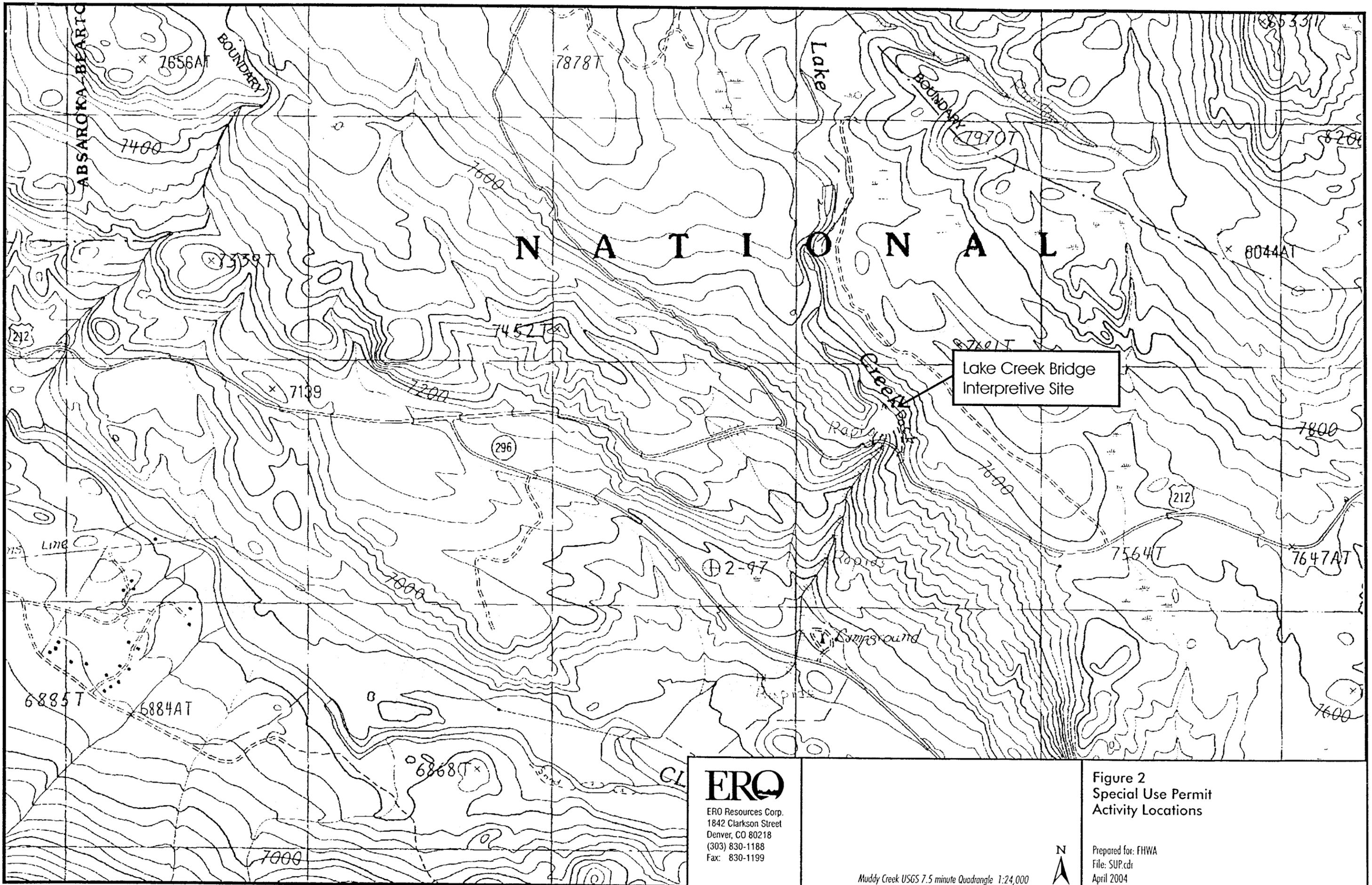
By: Rebecca Kus
(Authorized Officer Signature)

By: James W. Kurler
(Holder Signature)

Title: Forest Supervisor
(Name and Title)

Date: 6/24/04

Date: July 5, 2004



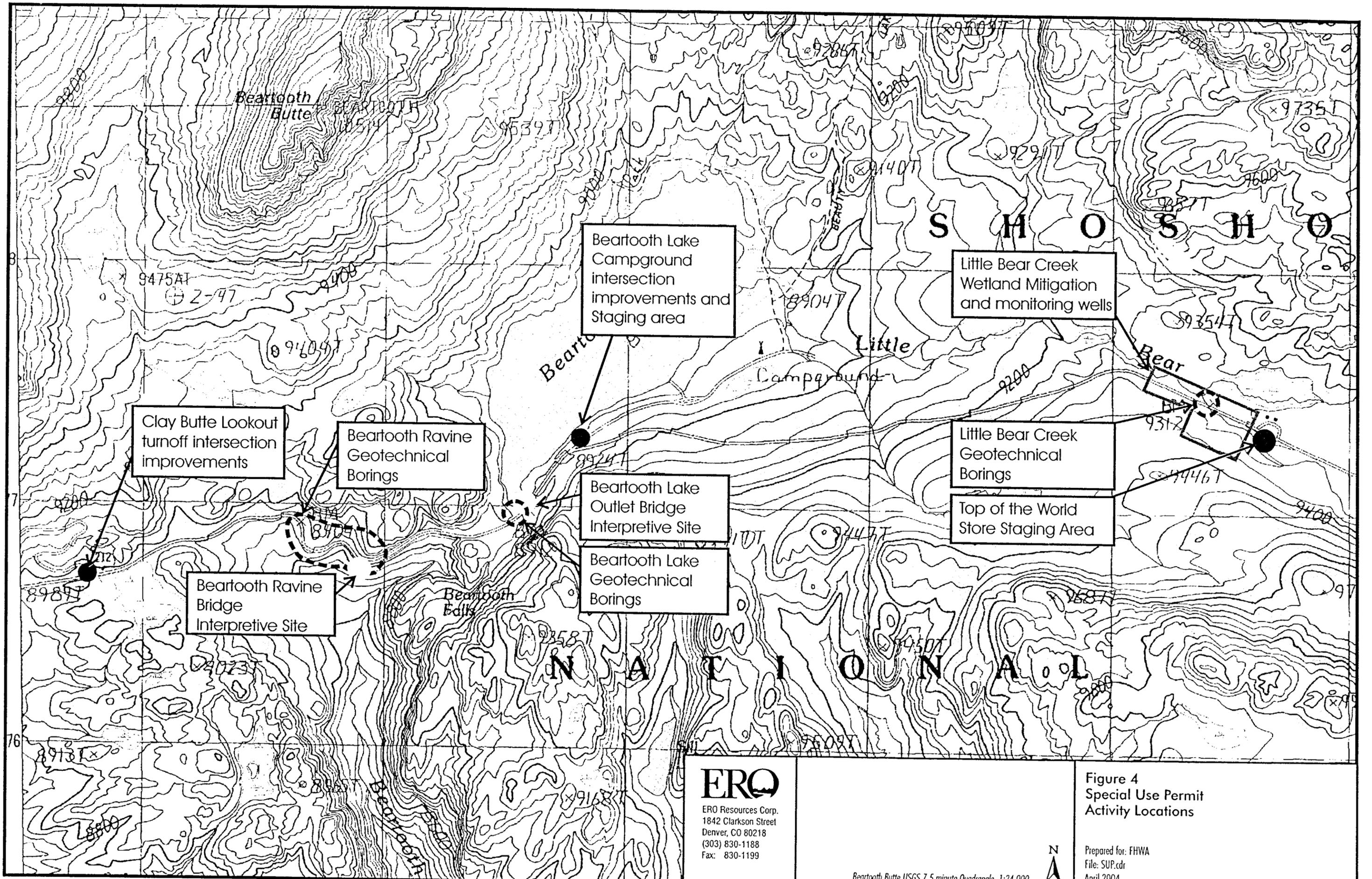
ERO
 ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

Figure 2
Special Use Permit
Activity Locations

Prepared for: FHWA
 File: SUP.cdr
 April 2004

Muddy Creek USGS 7.5 minute Quadrangle 1:24,000





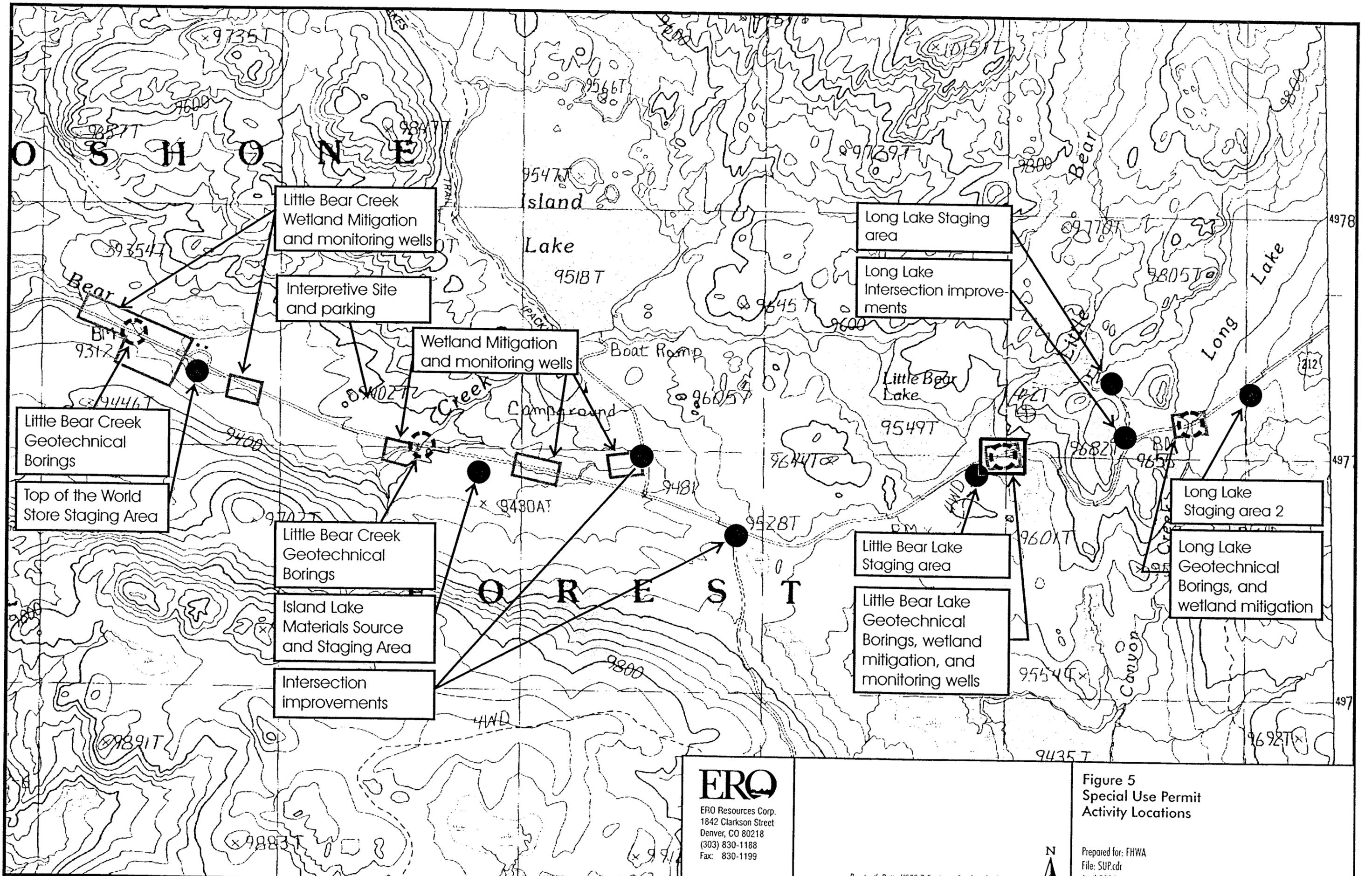
ERO
 ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

Figure 4
Special Use Permit
Activity Locations

Prepared for: FHWA
 File: SUP.cdr
 April 2004

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Beartooth Butte USGS 7.5 minute Quadrangle 1:24,000



ERO

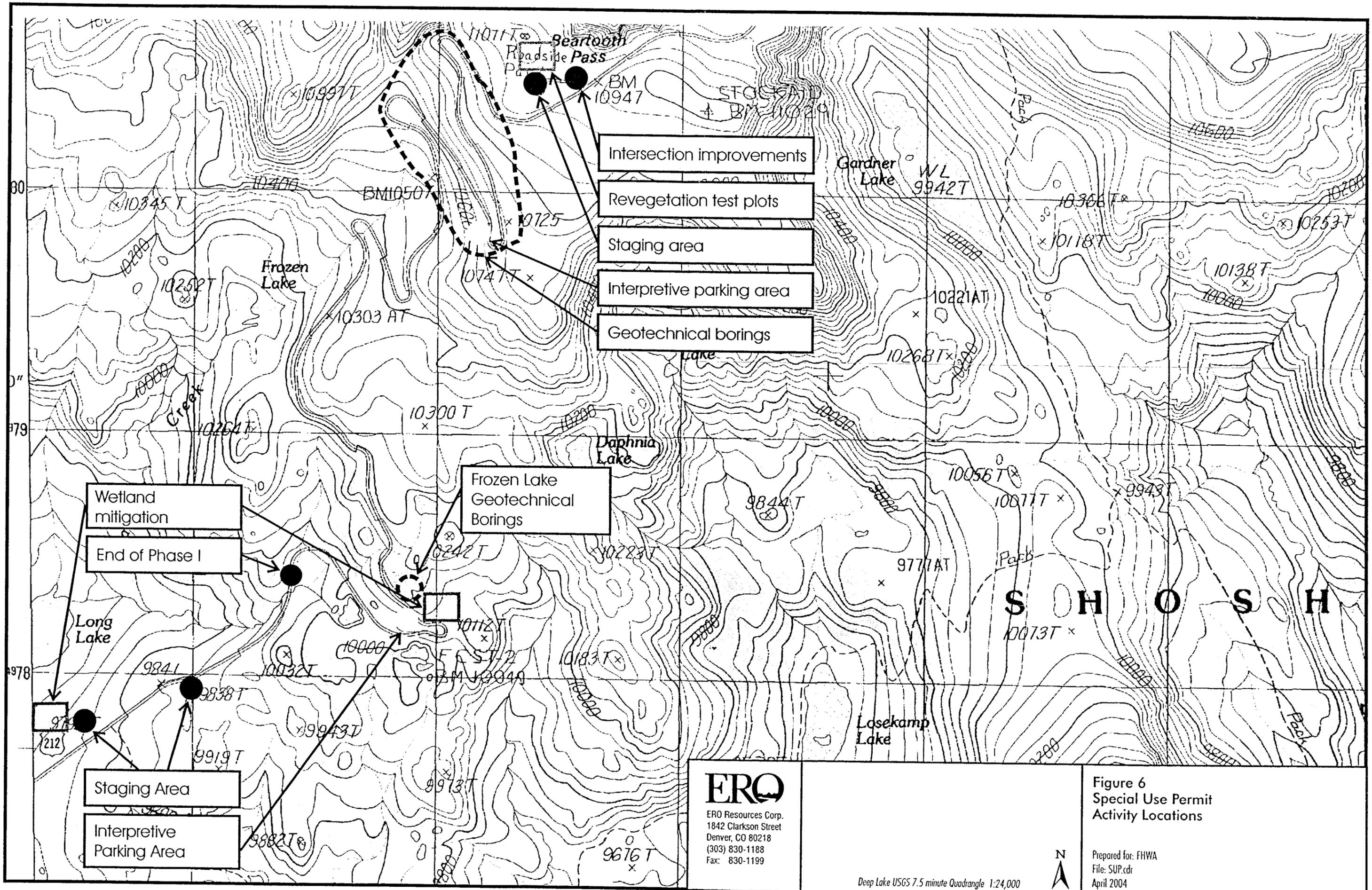
ERO Resources Corp.
1842 Clarkson Street
Denver, CO 80218
(303) 830-1188
Fax: 830-1199

Figure 5
Special Use Permit
Activity Locations

Prepared for: FHWA
File: SUP.cdr
April 2004

Beartooth Butte USGS 7.5 minute Quadrangle 1:24,000





ERO

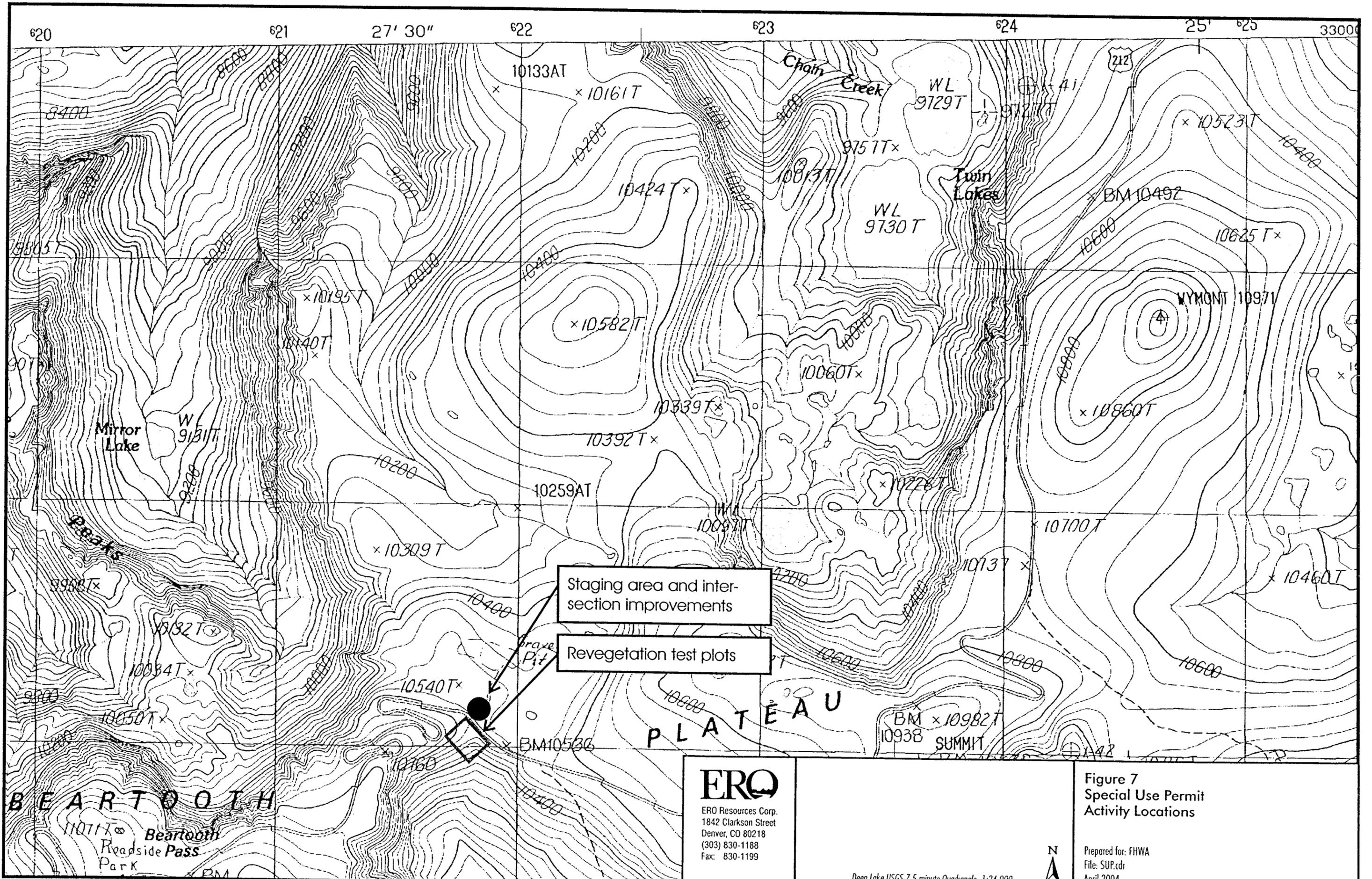
ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

Figure 6
Special Use Permit
Activity Locations

Prepared for: FHWA
 File: SUP.cdr
 April 2004

Deep Lake USGS 7.5 minute Quadrangle 1:24,000





ERO

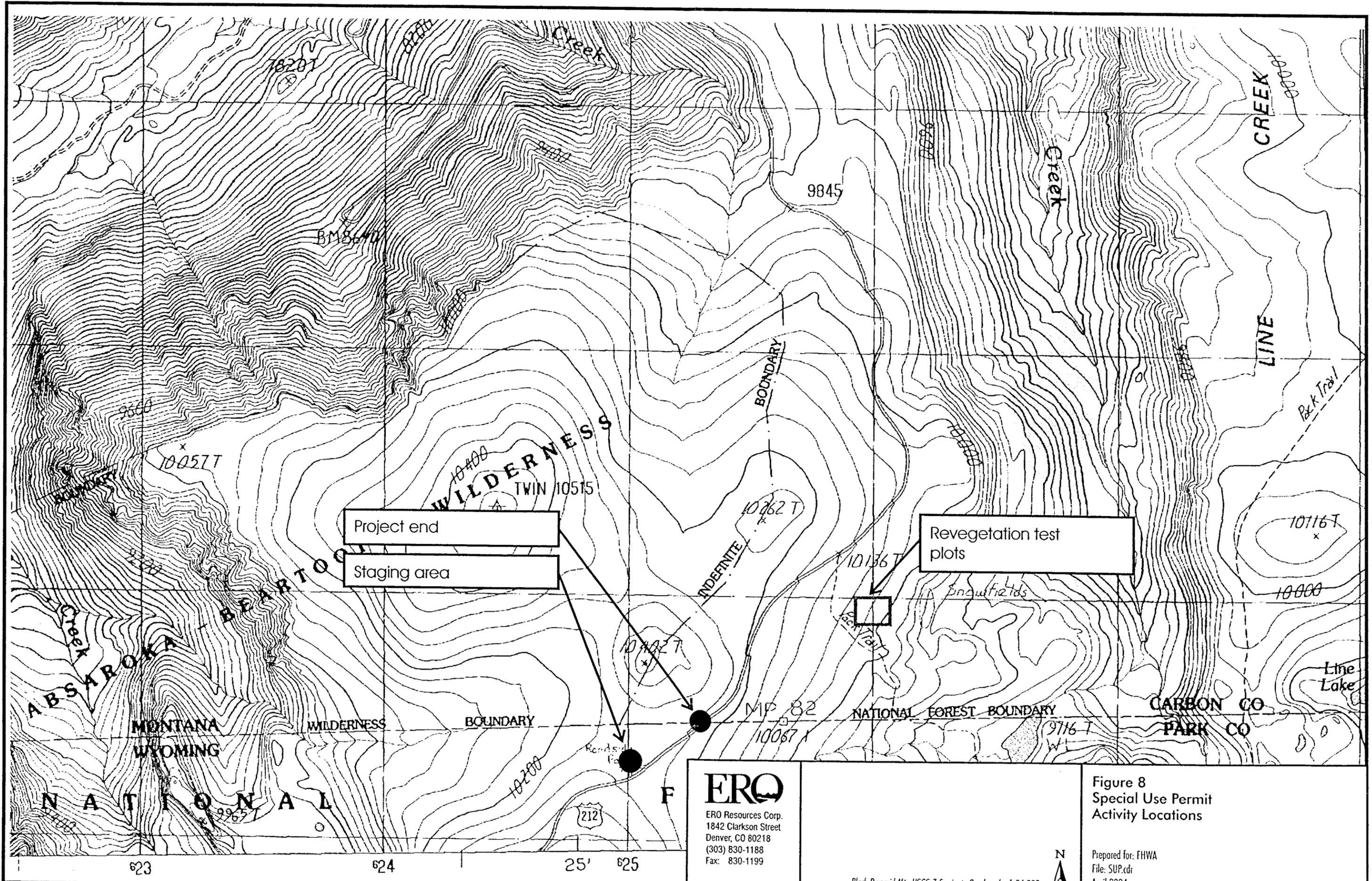
ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

Figure 7
Special Use Permit
Activity Locations

Prepared for: FHWA
 File: SUP.cdr
 April 2004

Deep Lake USGS 7.5 minute Quadrangle 1:24,000





ERO
 ERO Resources Corp.
 1842 Clarkson Street
 Denver, CO 80218
 (303) 830-1188
 Fax: 830-1199

Figure 8
Special Use Permit
Activity Locations

Prepared for: FHWA
 File: SUP.cdr
 April 2004

Black Pyramid Mtn USGS 7.5 minute Quadrangle 1:24,000



Authorization ID: CFK127
Contact ID: FED_HWY_ADMIN
Expiration Date: 12/31/2014
Use Code: 753

FS-2700-23 (4/97)
OMB 0596-0082

U.S. DEPARTMENT OF AGRICULTURE
Forest Service
AMENDMENT
FOR
SPECIAL USE AUTHORIZATION
AMENDMENT NUMBER: 1

This amendment is attached to and made a part of the special use authorization (identified above) issued to Federal Highway Administration on August 5, 2004 which is hereby amended as follows:

Enlargement of the clearing limits to the scaling limit line from Station 41+530 to 42+070, as depicted on the attached Exhibit A, attached to and made a part of this Amendment.

1 Provided: If any cultural materials are discovered during construction, work in the area must halt immediately and the Forest Service and the State Historic Preservation Staff must be contacted.

This Amendment is accepted subject to the conditions set forth herein, and to conditions 1 to 1 attached hereto and made a part of this Amendment.

Bert J. McCauley
(Holder Signature)

Dave Cowan
(Authorized Officer Signature)

BERT MCCAULEY PROJ. MGR.
(Name and Title)¹

for Rebecca Aus, Forest Supervisor
(Name and Title)

Date: NOVEMBER 9, 2004

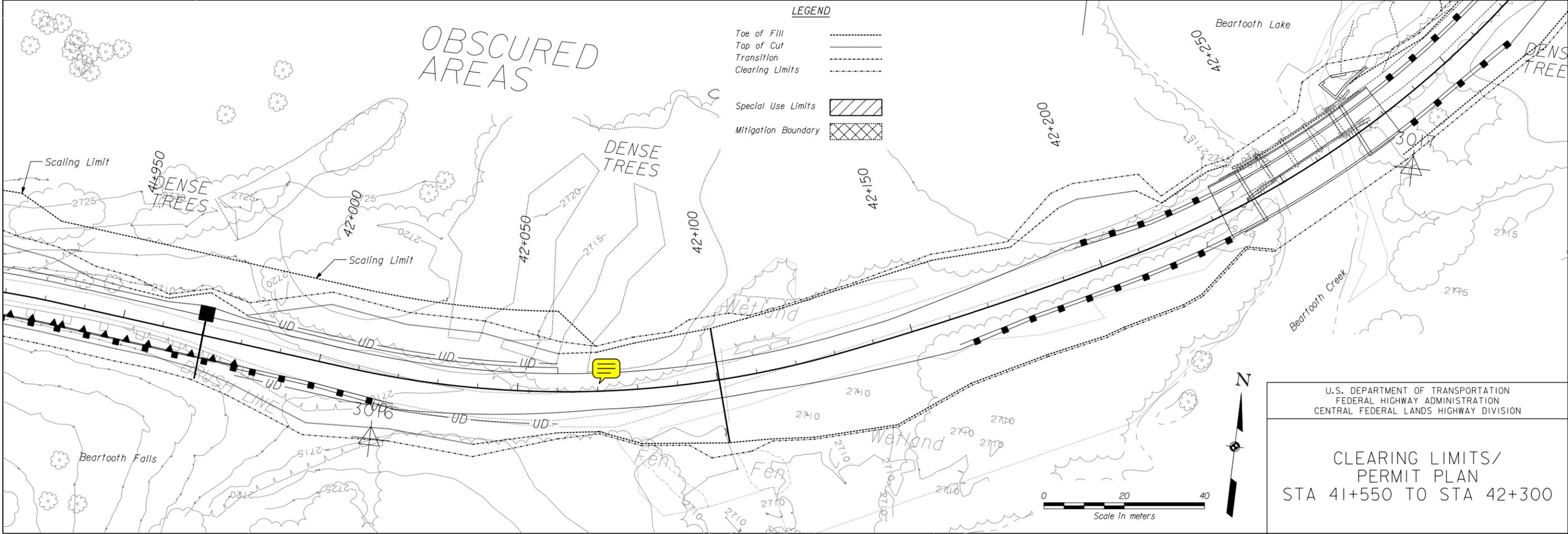
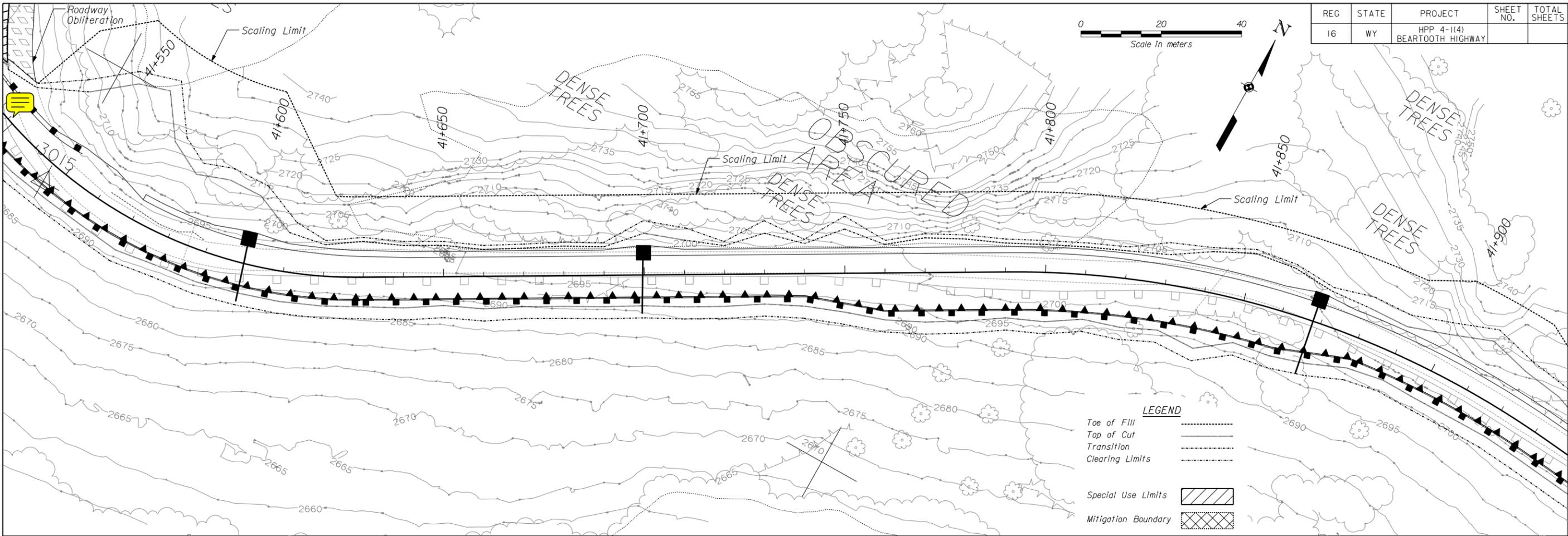
Date: 11/10/04

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.

This information is needed by the Forest Service to evaluate requests to use National Forest System lands and manage those lands to protect natural resources, administer the use, and ensure public health and safety. This information is required to obtain or retain a benefit. The authority for that requirement is provided by the Organic Act of 1897 and the Federal Land Policy and Management Act of 1976, which authorize the Secretary of Agriculture to promulgate rules and regulations for authorizing and managing National Forest System lands. These statutes, along with the Term Permit Act, National Forest Ski Area Permit Act, Granger-Thye Act, Mineral Leasing Act, Alaska Term Permit Act, Act of September 3, 1954, Wilderness Act, National Forest Roads and Trails Act, Act of November 16, 1973, Archaeological Resources Protection Act, and Alaska National Interest Lands Conservation Act, authorize the Secretary of Agriculture to issue authorizations for the use and occupancy of National Forest System lands. The Secretary of Agriculture's regulations at 36 CFR Part 251, Subpart B, establish procedures for issuing those authorizations.

The Privacy Act of 1974 (5 U.S.C. 552a) and the Freedom of Information Act (5 U.S.C. 552) govern the confidentiality to be provided for information received by the Forest Service Public reporting burden for collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

REG	STATE	PROJECT	SHEET NO.	TOTAL SHEETS
16	WY	HPP 4-1(4) BEARTOOTH HIGHWAY		



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U.S. DEPARTMENT OF TRANSPORTATION
 FEDERAL HIGHWAY ADMINISTRATION
 CENTRAL FEDERAL LANDS HIGHWAY DIVISION

**CLEARING LIMITS/
 PERMIT PLAN**
 STA 41+550 TO STA 42+300



United States
Department of
Agriculture

Forest
Service

Shoshone
National
Forest

808 Meadow Lane
Cody, WY 82414-4516
Voice: 307-527-6241
TTY: 307-578-1294
Fax: 307-578-1212

File Code: 2720-2

Date: December 15, 2005

Bert McCaulley
Project Manager
Federal Highway Administration
12300 W. Dakota Avenue
Lakewood, CO 80228

Dear Bert:

On July 5, 2004 and August 5, 2004, special uses permits CFK112 and CFK127 were issued for areas needed for the reconstruction of the Beartooth Highway. These permits authorize the occupancy of the Fox Creek Campground for a work camp, and temporary use areas needed for highway constructions.

Because Federal Highway funding for the Beartooth Highway construction was diverted to other uses in FY2005, this project has been delayed. Work is not expected to resume until late in 2006 at the earliest.

Clause II. B. in both of these permits requires the holder to exercise the use of the permit area for a minimum of 60 days each year, unless otherwise authorized in writing. By this letter, the Federal Highway Administration is relived of this requirement to exercise the use authorized by these permits until funding is received for the project.

Sincerely,

Mark Giacometto
for

BECKY AUS
Forest Supervisor



**WY HPP 4-1(5)
BEARTOOTH HIGHWAY**

**APPENDIX B – ENVIRONMENTAL
CHECKLIST**

Environmental Responsibilities Checklist

Beartooth Highway Rehabilitation & Reconstruction Project

Instructions: Each employee must check each box and sign and date the bottom of this sheet.

General Environmental Requirements

Goal: *To minimize impacts to the environment and to avoid permit or agreement non-compliance.*

- Conduct construction activities throughout the project area in accordance with the SCRs.
- No construction activities are to take place outside of the clearing limits.
- Do not disturb wetland areas marked with silt fence. Do not complete slope rounding in or adjacent to wetland areas.
- Do not cross streams or wetland areas in construction vehicles or equipment unless authorized by Contractor management or the CO.
- Do not remove trees or shrubs unless authorized by Contractor management or the CO.
- Do not flush concrete trucks or flumes near wetlands or water.
- Salvage topsoil from tree stumps before any earthwork operations take place.
- Store topsoil in approved areas and at an approved depth.
- Power wash construction equipment at an approved location to remove any noxious weed seeds prior to use on the project.
- Handle stones from existing bridges and headwalls so they can be reused.
- Notify the CO if any cultural resources are found during construction activities.

Grizzly Bear Requirements

Goal: *To minimize impacts to the grizzly bear and its habitat and to protect construction staff.*

- Conduct construction activities throughout the project area in accordance with the SCRs.
- View "Working in Bear Country" and "Staying Safe in Bear Country" DVDs
- From midnight to 6:00 am September 1 to winter shutdown of the road, no night time closures or night work is permitted throughout the project area.
- Do not disturb any areas outside of clearing limits, including any construction equipment access or truck turnarounds.
- Report any grizzly bear sightings to Contractor management or the CO immediately.
- Report any road kill on or near the road to Contractor management or the CO immediately.
- Camping is allowed, as directed by the Shoshone National Forest, in designated campgrounds.
- Store all food, refuse, leftovers, beverages, cooking grease, perfumes, deodorants, and other odorous substances (attractants), including unwashed utensils, barbecue grills, and clothing soiled with food, in bear-resistant containers or buildings. Do not bury attractants.
- Flaggers and other workers outside of enclosed vehicles must not keep food and other attractants with them. Food items must be kept in an enclosed vehicle or other bear-resistant container at all times. Coolers are not bear resistant.
- Do not bring pets or firearms to the campgrounds or to other construction locations.

I have viewed the required grizzly bear DVDs, and read the above Requirements and agree to comply with all requirements herein.

Employee Signature

Company

Date

Failure to Comply: All Contractors are responsible for compliance with Forest Service regulations. The SNF's special order #04-00-104 describes requirements for handling and storage of food and other attractants. Grizzly bear special order #97-007 describes requirements for maintaining a safe distance from bears (100 yards). Failure to comply with the SNF's special orders, all the provisions of this Environmental Responsibilities Checklist, or intentional or negligent acts that result in injury to or death of a grizzly bear may cause administrative and/or criminal action to be taken against the FHWA and to all persons acting on the FHWA's behalf.

**WY HPP 4-1(5)
BEARTOOTH HIGHWAY**

**APPENDIX C– U.S. ARMY CORPS OF
ENGINEERS PERMIT 199840159 (OPTION Y)**

**U.S. Army Corps of Engineer's
Permit Number 199840159**



**DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
106 SOUTH 15TH STREET
OMAHA, NEBRASKA 68102-1618**

**OFFICIAL BUSINESS
May 28, 2004**

Regulatory Branch

Mr. Bert J. McCauley, P.E.
FHWA Project Manager
U.S. Department of Transportation
Federal Highway Administration
555 Zang Street, Room 259
Lakewood, Colorado 80228-1010

Dear Mr. McCauley:

Enclosed is Department of the Army Permit No. 199840159 for the discharge of dredge and fill material associated with the rehabilitation and realignment of a portion of U.S. Highway 212, Beartooth Highway.

Please note the General and Special Conditions of the permit. General Condition 1. establishes the time limit for completing the work.

If you have any questions regarding this authorization, please contact Mr. Chandler Peter, Project Manager, Wyoming Regulatory Office, at (307) 772-2300.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathryn M. Schenk".

Kathryn M. Schenk, P.E.
Chief, Regulatory Branch
Operations Division

Enclosure

DEPARTMENT OF THE ARMY PERMIT

Permittee Federal Highway Administration
Central Federal Lands Highway Division
Permit No. 199840159

Issuing Office Omaha District Corps of Engineers

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

The permitte is authorized to permanently discharge dredge and fill material into 4.80 acres of wetlands and 0.13 acres of open water associated with the rehabilitation and realignment of a portion of U.S. Highway 212, Beartooth Highway, Segment 4. The permitte is also authorized to temporarily impact 1.76 acres of jurisdictional wetlands and waters with Phase I of the project associated with the reconstruction work. The project further involves the permanent loss of 1.50 acres of non-jurisdictional wetlands with Phases I and II of the project as well as the temporary impact of 1.22 acres of non-jurisdictional wetlands. The project is shown on the plans entitled Plans for Proposed Wyoming Forest Project Project HPP 4-1 (4) Beartooth Highway (U.S. 212) Shoshone National Forest, Park County, Wyoming dated August 2002, prepared by PBS&J.

Project Location:

Park County, Wyoming

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on May 31, 2014. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

General continued on Page 4
Special Conditions:

Special conditions on pages 5 through 10

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

() Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

Section 404 of the Clean Water Act (33 U.S.C. 1344).

() Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

Bert J. McCauley
(PERMITTEE)

5-25-04
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

KURT F. UBBELOHDE
(DISTRICT ENGINEER)
COLONEL, CORPS OF ENGINEERS

5/28/04
(DATE)
BY: Kathryn M. Schenk
KATHRYN M. SCHEMK, CHIEF
REGULATORY BRANCH, OPERATIONS DIVISION

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEEE)

(DATE)

**FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
DA PERMIT NO.: 199840159
Page 4**

General Conditions (continued)

7. Materials Handling and Disposal and Soil Erosion and Sediment Control

- a. The permittee is required to install silt fencing or other soil erosion and sediment control technologies in all construction areas that contribute to wetlands and other aquatic resources prior to commencement of construction in those areas.
- b. The clearing of vegetation will be limited to that which is absolutely necessary for the construction of the project.
- c. All dredged or excavated materials, with the exception of that authorized herein, will be placed on an upland site above the ordinary high water line in a confined area, not classified as a wetland, to prevent the return of such materials to the waterway.
- d. Deposition of excavated materials on shore and all earthwork operations on shore will be carried out in such a way that sediment runoff and soil erosion into the water is avoided. A soil sediment and erosion control plan will be implemented.
- e. All construction debris (which includes excess dredge and/or fill materials, wood, cleared vegetation, concrete, and all other materials not specifically addressed in the permit) will be disposed of on land in such a manner that it cannot enter a waterway or wetland.
- f. Equipment for handling, conveying, and discharging materials during construction will be operated to prevent dumping or spilling the materials into waters of the U.S., except as approved herein. Use of machinery in the waterway will be kept to a minimum. All work in the waterway will be performed in such a manner so as to minimize increases in suspended solids and turbidity that may degrade water quality and damage aquatic life outside the immediate area of operation.
- g. The disposal area, method of disposal, or method of dredging will not be changed without prior written approval of the District Engineer.
- h. Wash out of concrete trucks is to be accomplished at a site, and in such a manner, that wash water cannot enter any wetland or waterway. Measures will also be employed to prevent wet concrete from entering any waterway.

8. Riprap and Bank Stabilization

- a. Only clean rock material from a non-streambed source will be utilized for riprap in order to avoid the introduction of fines, which would result in excessive local turbidity.
- b. Large angular rock is required to be used for bank hardening and will be of such size that it will not be displaced by normal high flows.
- c. All areas along the bank that are disturbed or newly created by the construction activity, which are not to be riprapped, will be revegetated with vegetation indigenous to the area. This vegetation will include both herbaceous and woody species. This may require periodic maintenance, such as reseeding, watering, implementation of livestock grazing restrictions, or fencing, etc., to ensure survival of replacement vegetation. Riprapped areas will not be further disturbed through vegetation control techniques.

**FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
DA PERMIT NO.: 199840159**

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9. Fuel/Chemical Control

- a. Measures will be employed prior to initiation of construction to prevent or control spilled petroleum products, chemicals, or other deleterious material from entering the water
- b. The permittee will formulate a contingency plan to be effective in the event of a spill.
- c. Fuel storage tanks above ground will be diked or curbed or other suitable means provided to prevent the spread of liquids in case of leakage in the tanks or piping.

10. Remedial Actions

- a. When the District Engineer has been notified that a dredging and/or filling activity associated with the project is adversely affecting fish or wildlife resources, or the harvest thereof, and the District Engineer subsequently directs remedial measures, the permittee will comply with such directions as may be received to suspend or modify the activity to the extent necessary to mitigate or eliminate the adverse effect as required.

11. Suitable Materials

- a. All discharges of dredge and fill material will consist of suitable material free from toxic pollutants in toxic amounts. Examples of unsuitable material include, but are not limited to, trash, construction debris, car bodies, asphalt.

12. Maintenance

- a. Fills created by the discharges will be properly maintained to prevent erosion and other non-point sources of pollution.

**FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
DA PERMIT NO.: 199840159**

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Special Conditions

After a detailed and careful review of all the conditions contained in this permit, the permittee acknowledges that, although said conditions were required by the Corps of Engineers, nonetheless the permittee agrees to those conditions voluntarily to facilitate issuance of the permit; the permittee will comply fully with all the terms of the permit conditions.

Special Conditions

Provisional Requirements and Project Phase Review

1. No discharge of dredged or fill material can occur in waters of the U.S. until the permittee formulates, submits and receives approval from the Corps of the final wetlands and waters mitigation plan. The submittal is to include detailed channel realignment designs and plans and associated hydraulic and hydrologic (H&H) analysis for channel realignment work proposed at station 46+600-46+700 (shown on Landscape Plan 12). H&H analysis is also to be prepared and submitted for the proposed channel construction work that is to result in the creation of 1,010 lineal feet of intermittent creek channel near stations 45+950 – 46+100 (shown on Landscape Plan 10).
2. No discharge of dredged or fill material can occur to waters of the U.S. and other wetlands, or other adverse effects, for Phase II of the project (Station 52+240 east to the Montana state line) until the permittee formulates 95% designs for that phase of the project, submits them for review, and receives subsequent approval from the Corps of Engineers, Omaha District. Submissions are to include:
 - Detailed design drawings and associated tables showing jurisdictional and non-jurisdictional wetlands and waterbodies and proposed fills, structures, excavations and other impacts. Temporary impacts must be distinguished from permanent.
 - Specific mitigation features and actions to offset these impacts that are not addressed in the phase I permit.
 - Channel designs for realignments and mitigation features.
 - Soil erosion and sediment control plans.

Wetlands

1. The permittee is required to finalize the wetland, waters, and riparian mitigation plan and receive final approval before implementing it. Preliminary wetland mitigation designs are shown on plans entitled Landscape Plans 7, 8, 10-18, including Seed Mixes and Plant Schedules, drawn by ERO Resources and HLA. The final mitigation report and design drawings are to be relied upon for wetland and riparian mitigation construction requirements.
 - The permittee is required to restore 2.43 acres of scrub-shrub and emergent wetlands at sites 7, 8, 10-14.
 - The permittee is required to restore on-site 1.76 acres of jurisdictional wetlands that are temporarily impacted and 1.22 acres of non-jurisdictional wetlands temporarily impacted along the project corridor.

**FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
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- The permittee is required to restore 0.4 acres of fen wetland at the Little Bear Lake and Long Lake Fen areas.
 - The permittee is required to create 0.18 acres of emergent wetland and scrub-shrub wetlands at sites 17 and 18.
 - The permittee is required to preserve no less than 7.26 acres of forested, scrub-shrub and emergent wetlands at the Church property. Remaining aquatic resources contained in the preservation area will be preserved and can be used to offset losses associated with failure that may occur at other mitigation sites. Prior to completion of the highway project, the permittee must submit an executed deed restriction associated with the Church property wetland preservation area. The instrument is to be appropriately filed with the county in the State of Montana and any applicable government entity. The restriction is to include an accurate legal description and map of the surveyed boundaries of the preservation site and fully describe the total wetland area contained in the preservation area.
2. Wetland mitigation is to be initiated before or concurrently with initiating discharges of dredged and/or fill material in waters of the U.S associated with the project. Efforts undertaken to purchase the Church property and its permanent protection are considered to be initiation of the wetland mitigation plan.
 3. The permittee will use a qualified individual or firm, acceptable to the Corps, who is experienced in wetland mitigation site construction and planting. The qualified representative(s) of this firm will be present during all wetland mitigation construction, including vegetation seeding, planting, or other treatment actions.
 4. The permittee is required to transport to the wetland restoration and creation mitigation sites, or to riparian restoration areas, suitable wetland soils (upper 12 inches or shallower as suitable) from the project impact areas.
 5. All upland areas adjacent to any wetland mitigation site that were disturbed by construction of the project must be monitored qualitatively to assess vegetative cover condition and erosion potential. These upland areas need to be adequately stabilized and have vegetative cover consisting of indigenous species with less than 20 percent noxious weeds. If, through monitoring of the wetland mitigation areas, erosion or weed problems are identified in the upland areas, the permittee will implement a weed control plan.
 6. The wetland, waters and riparian mitigation sites are to persist as long as the fills remain in wetlands and other aquatic environments.

**FEDERAL HIGHWAY ADMINISTRATION
CENTRAL FEDERAL LANDS HIGHWAY DIVISION
DA PERMIT NO.: 199840159**

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7. Annual monitoring reports documenting wetland mitigation progress and eventual success must be submitted to the Corps of Engineers, Omaha District, Wyoming Regulatory Office in accordance with the requirements of special condition "Other - 3" below. Reports are to be submitted for a period not to exceed 5 years or until the wetland mitigation is determined by the Corps to be successful, whichever is less. If success is not achieved within 5 years, the permittee will be required to modify the site(s) and/or implement other mitigation plan(s), both of which are subject to approval by the Corps. Wetland monitoring requirements can be extended if success is not achieved within the 5-year period. Wetland monitoring reports must include the following:
 - a. Post-construction wetland delineation completed in accordance with the Corps of Engineers 1987 Wetland Delineation Manual. Sampling is to be accomplished during the middle of the growing season. Monitoring reports must include the current Corps of Engineers delineation data forms. Vegetation data must be collected at established quadrat sampling points along established transects to determine vegetation composition. Transects are to be spaced at 100-foot intervals along the length of each wetland mitigation site or adjusted to ensure that each mitigation site is adequately sampled to support wetland determinations that proposed acreage is achieved. There are to be a minimum of 3 sampling stations per transect with 1 quadrat sampling point for herbaceous cover type nested within 1 10-foot radius sample plot for woody cover type per sampling station. Vegetation assessments are to be accomplished in accordance with Corps-accepted sampling techniques. Hydrology data must be collected at established locations. Installation of shallow groundwater wells in each mitigation site is required. Water data, surface and subsurface, must be recorded at the normal peak of the hydrograph and/or groundwater. Frequency and duration of adequate hydrology must be documented. Soils must also be investigated for evidence of redoximorphic features as well as soil color, texture, etc.
 - b. Plan view map showing the wetland mitigation site and indicating areas where wetlands are developing as well as identification of type. Acreage of each wetland/water type based upon the Cowardin classification (e.g., palustrine emergent, aquatic bed, unconsolidated bed, scrub-shrub) needs to be specified in tabular form and correlated to the plan view drawing. Clarification of wetland type should be included for the emergent class, if warranted, such as meadow, shallow marsh, and deep marsh.
 - c. Comparison of monitoring results with the approved mitigation plan. Data collection and analysis must be accomplished by a qualified individual proficient in wetland delineation and functional assessment techniques with conclusions discussed in each report.
 - d. Photo documentation points must be established for each wetland cell. Reports must contain a minimum of 2 photos per site taken during the growing season.

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- e. With the exception of the Little Bear Lake Fen area, wetland mitigation success is achieved when the mitigation site has more than 60% gross vegetative aerial coverage as determined by the average of all quadrat sample plot data. Hydrophytes must comprise a minimum of 90% of the dominant species as determined from the average of all data points from all polygons. All wetland data points must be comprised of more than 50% hydrophytes which are Wyoming native species. A weed control plan must be implemented for any site if species listed in the Wyoming Seed Law Prohibited Noxious Weed List (designated and prohibited) comprise more than 20% of the dominants at any mitigation site (cell).
 - f. A post-construction survey (GPS, etc.) which is acceptable to the Corps of Engineers (Corps) that documents the actual wetland acreage created shall be completed and provided to the Corps Wyoming Regulatory Office prior to the Corps' concurrence that mitigation success has been achieved.
 - g. In addition to or in lieu of (as appropriate) the monitoring and success conditions stated in 7a-f above, the Little Bear Lake and Long Lake Fen Mitigation Sites must meet the following requirements and performance standards.
 - Ground Surface – post-construction elevation of the restored fen areas must match, to the maximum extent practical, the existing topography of the fen immediately adjacent to the restoration area.
 - Hydrology – saturation to the soil surface by a water table no deeper than 12 inches for at least 30 days during the growing season.
 - Vegetation – the vegetation community in the fen areas is to have similar species composition with the existing plant community in adjacent fen areas.
8. No livestock grazing of constructed or restored wetland mitigation areas will occur prior to success.

Riparian

1. The permittee is required to create/restore 0.80 acres of riparian habitat along the project corridor as shown in the mitigation plan entitled Typical Pattern Detail Riparian.

Other

1. The permittee is required to comply with all provisions contained in the Programmatic Agreement for Cultural Resources. The permittee is further required to ensure that no actions necessary to build or operate the project violate stipulations and conditions contained in Section 106 of the National Historic Preservation Act (NHPA).
2. The permittee is required to comply with the requirements set forth in the U.S. Fish and Wildlife Service's Biological Opinion issued December 1, 2003 for the project.

**FEDERAL HIGHWAY ADMINISTRATION
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3. All reportable monitoring data (wetlands, water quality, riparian, upland, etc.) required by this permit shall be provided in a single, annual volume clearly identifying each condition the data are related to. Reports are to be submitted for a period of at least 5 years, or until mitigation success is achieved, whichever is less. The first monitoring report is due March immediately following completion of wetland mitigation construction. The report is to be provided to the Corps of Engineers, Wyoming Regulatory Office, 2232 Dell Range Blvd., Suite 210, Cheyenne, Wyoming, 82009; Environmental Protection Agency, Region VIII, Attn: 404 Program, 999 18th Street, Suite 500, Denver, Colorado 80202; and U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming, 82001.

4. An on-site environmental compliance officer must be present during the construction of each phase of the project.



The State of Wyoming



Department of Environmental Quality

Dave Freudenthal, Governor

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002

ADMIN/OUTREACH (307)777-7758 FAX 777-3610	ABANDONED MINES (307)777-6145 FAX 777-6462	AIR QUALITY (307)777-7391 FAX 777-5616	INDUSTRIAL SITING (307)777-7369 FAX 777-6937	LAND QUALITY (307)777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307)777-7752 FAX 777-5973	WATER QUALITY (307)777-7781 FAX 777-5973
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October 14, 2003

James W. Keeley
Federal Highway Administration
555 Zang Street, Room 259
Lakewood, CO 80228

RE: Certification of Individual Permit number 199840159, Beartooth Highway upgrade project, Beartooth Lake, Long Lake, Beartooth Creek, Canyon Creek, Littlerock Creek, and Rock Creek (Class 2AB), Multiple Sections, Townships 57 & 58 North, Ranges 104, 105, 106, & 107 West, Park County

Dear Mr. Keeley:

In accordance with the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the application referenced above and offers the following comments regarding the proposed action.

The following conditions apply when operating equipment or otherwise undertaking construction in a water of the state:

- a. Construction equipment should not be operated below the existing water surface except as follows:

Fording the stream at one location is acceptable, however, vehicles and equipment should not push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or footing installations is acceptable to the extent that it does not create turbidity in excess of the Chapter 1 Surface Water Standards or unnecessary stream channel disturbance. Frequent fording should not occur in areas where extensive turbidity will be created. In all cold water fisheries and drinking water supplies in stream activities associated with this permit shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs).

In accordance with Section 23(c)(2) of the Chapter 1 Surface Water Standards, the Administrator of the Water Quality Division may authorize temporary increases in turbidity above the numeric criteria in Section 23 (a) of the Standards in response to an individual application for a specific activity. An application must be submitted and a variance approved by the administrator before any temporary increase in turbidity above the numeric limits takes place.

10/20/03

- b. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction should be designed to handle high flows that could be anticipated during the construction period. All structures should be completely removed from the stream channel at the conclusion of construction and the area restored to a natural appearance.
- c. Care should be taken to cause only the minimum necessary disturbance. Streambank vegetation should be protected except where its removal is absolutely necessary for completion of the work.

Any vegetation, debris, or other material removed during construction must be disposed of at some location out of the stream channel or adjacent wetland areas where it cannot reenter the channel during high stream flow or runoff events.

All cut and fill slopes that will not be protected with riprap should be revegetated with appropriate species to prevent erosion.

- d. All fill material should be placed and compacted and subsequently protected from erosion. Areas to be filled should be cleared of all vegetation, debris, and other materials that would be objectional to the fill.
- e. The period and timing of construction should be adjusted as necessary to minimize conflicts with fish migration and spawning.
- f. Care must be taken to prevent any petroleum products, chemicals, or other deleterious materials from entering the water. A spill contingency should be developed for all projects where a large amount of petroleum products or solvents will be stored on the project site, and must be prepared when storage of these materials exceeds the federal limits.

Other Related Water Quality Permitting Requirements

Erosion/Sediment Control: An NPDES storm water permit for construction activities will be required from the Wyoming Department of Environmental Quality (DEQ) before any surface disturbance takes place for any project that will clear, grade, or otherwise disturb one or more acres. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for filing a Notice of Intent (NOI) and complying with the provisions of the general permit. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact Barb Sahl at 307-777-7570.

The major requirements of the storm water general permit pertain to the development and implementation of a pollution prevention plan along with regular inspection of pollution control facilities. The permit is required for the surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpiling areas, and equipment staging and maintenance areas.

Mr. Keeley
October 14, 2003
Page 3

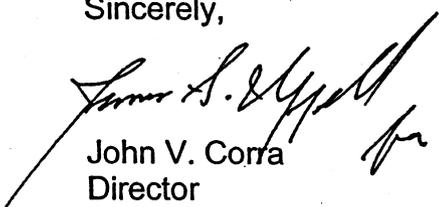
Non-Storm Water Discharges: An NPDES discharge permit from DEQ may be required for point source discharges to surface waters not related to storm water runoff such as discharges from gravel crushing and washing operations, cofferdam or site dewatering, vehicle or machinery washing, or other material processing operations if they are conducted. Depending on the type of operation, the length of operation, and the type of discharge either a general temporary discharge permit or an individual discharge permit may be required. Please be advised that if an individual permit is required, processing will require at least 90 days. Contact Roland Peterson at 307-777-7090 for additional information.

SPCC (Spill Prevention Control and Countermeasures): If above ground storage of petroleum products exceeds 1,320 gallons in total or more than 660 gallons in a single tank an SPCC plan may have to be developed as provided for in the Environmental Protection Agency's Oil Pollution Prevention regulations (40CFR112). The Region 8 EPA office in Denver should be contacted for guidance.

According to the provisions of the state certification program for activities requiring dredge and fill permits from the U.S. Army Corps of Engineers, this office has reviewed the application referenced above and certifies this project is acceptable providing that construction is accomplished according to the recommendations stated above, the procedures for state certification are followed, and the Federal Highway Administration or its contractor take reasonable care to ensure that all disturbed areas are protected from erosion. The Department also reserves the right to amend, modify, suspend, or revoke this certification or any of its terms or conditions as may be appropriate or necessary to protect water quality and associated beneficial uses.

Please be aware that this letter only constitutes state certification of this project as required by Section 401 of the Federal Clean Water Act and **is not an authorization to begin construction of this project**. This letter does not exempt the Federal Highway Administration or its contractor from any other federal, state or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property that the activity may cause.

Sincerely,



John V. Corra
Director
Department of Environmental Quality

JVC/JFW/JML/bb/3-1090.ltr

cc: Tom Collins, Wyoming Game and Fish, Cheyenne
Rex Fletcher, EPA (8 EPR-EP), 999 18th Street, Suite 300, Denver, CO 80202
Chandler Peter, USACE, 2232 Dell Range Boulevard, Suite 210, Cheyenne WY 82009
Michael Long, US FWS, 4000 Morrie Avenue, Cheyenne, WY 82001

**WY HPP 4-1(5)
BEARTOOTH HIGHWAY**

APPENDIX D – NPDES PERMIT (OPTION Y)

Department of Environmental Quality WYPDES



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Dave Freudenthal, Governor

John Corra, Director

Authorization to Discharge Storm Water Associated Large Construction Activities Under the National Pollutant Discharge Elimination System

In compliance with the provisions of Chapter 2 of the Wyoming Water Quality Rules and Regulations, the Wyoming Environmental Quality Act and the federal Water Pollution Control Act,

Federal Highway Administration Central Federal Lands Highway

WY HPP 4-1(0), Wyoming Forest Highway 4 Road Improvement

N/2 Section 7, Township 57 North, Range 105 West to NESE, Section 11, Township 57 North, Range 106 West

and located within the State of Wyoming which has or may discharge storm water associated with Construction Activities, is hereby authorized to discharge to the surface waters of the State of Wyoming in accordance with the requirements of this permit which was issued September 1, 2006.

Coverage under the general permit expires March 15, 2011.

This facility has been assigned permit authorization number **WYR102484**.

Authorization under this general permit is effective beginning 2006-09-20 00:00:00.

The permittee listed above is subject to a statutorily-required annual \$100 fee (W.S. §35-11-312) for as long as this authorization is active or until the general permit expires. See Part 5 of the general permit for information regarding termination of coverage.

Discharges from dewatering of collected storm water and minor amounts of ground water from excavations and depressions are permitted provided that requirements specified in Part 8.8 are followed and the necessary BMPs are installed and effective. Discharges that consist of process or wastewaters or more than minor amounts of ground water must be covered under a separate WYPDES permit specifically for those discharges.

Attached is a copy of the general permit. If you have any questions regarding the conditions of your permit, contact Barb Sahl at (307) 777-7570 or John Gorman at (307) 777-5622.

Authorized Signature
Department of Environmental Quality/Water Quality Division

Mailing Address:

Federal Highway Administration Central Federal Lands Highway
Bert McCauley
12300 West Dakota Avenue, Suite 380 (HFPM-16)
Lakewood, CO 802282583

Herschler Building • 122 West 25th Street • Cheyenne, WY 82002 • <http://deq.state.wy.us>

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ABANDONED MINES
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FAX 777-6482

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7369
FAX 777-6937

LAND QUALITY
(307) 777-7766
FAX 777-5864

SOLID & HAZ. WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973





Department of Environmental Quality

To protect, conserve, and enhance the Quality of Wyoming's environment for the benefit of current and future generations



John Corra, Director

General Permit to Discharge Storm Water Associated with Large Construction Activity Under the Wyoming Pollutant Discharge Elimination System (WYPDES)

In compliance with the provisions of Chapter 2 of the Wyoming Water Quality Rules and Regulations, the federal Water Pollution Control Act and the Wyoming Environmental Quality Act, facilities located within the State of Wyoming (except areas within the Wind River Indian Reservation where the state does not have jurisdiction) which are or may discharge storm water associated with large construction activities, are hereby authorized to discharge to surface waters of the State of Wyoming upon compliance with the requirements of this permit.

This general WYPDES permit WYR10-0000 is issued under the provisions of Wyoming Water Quality Rules and Regulations Chapter 2.

This permit shall become effective on September 1, 2006 and expire on March 15, 2011.

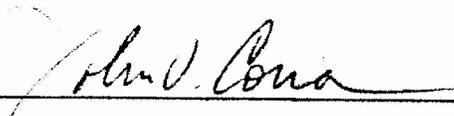
Discharges are authorized under this permit only after submission of a Notice and Intent to and receipt of a Letter of Authorization from the Department of Environmental Quality/Water Quality Division. See Part 3 of the permit for additional information.



John F. Wagner
Administrator - Water Quality Division

8/21/06

Date



John V. Corra
Director - Department of Environmental Quality

8/22/06

Date

Herschler Building - 122 West 25th Street - Cheyenne, WY 82002 - <http://deq.state.wy.us>



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(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973

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Part 1 Coverage Under this Permit

- 1.1 Permit area. The permit covers all areas within the State of Wyoming except areas within the Wind River Indian Reservation where the State does not have jurisdiction.
- 1.2 Storm water discharges covered under this permit
 - 1.2.1 Storm water discharges associated with new and existing "large construction activities."
 - 1.2.2 Storm water discharges from areas that are dedicated to producing earthen materials, such as sand and gravel, for use at a single large construction activity covered under this permit. Gravel pits and borrow areas must be opened and operated just for the permitted project. At the end of the project equipment must be removed and the site(s) must be reclaimed. A site that serves more than one project either concurrently or at different times must be permitted under a WYPDES Mineral Mining General Storm Water Permit (or an individual permit in the case of discharges that may reach class 1 waters) rather than the Large Construction General Permit.
 - 1.2.3 Storm water discharges from asphalt batch plants and concrete batch plants that are dedicated to the single large construction activity covered under this permit. At the end of the project equipment must be removed and the production site(s) must be reclaimed. If the plant(s) serves more than one project it must be permitted under a WYPDES Industrial General Permit (where discharges may reach a class 1 water a WYPDES individual permit will be required) rather than the Large Construction General Permit.
 - 1.2.4 Discharges from dewatering of collected storm water and minor amounts of ground water from excavations and depressions on a permitted site provided that requirements specified in Part 8.8 are followed and necessary BMPs are installed and effective.
 - 1.2.5 Storm water discharges from "large construction activities" receive coverage under this permit when the Administrator provides a written authorization to the applicant that the Notice of Intent has been accepted and the permitted activity is covered under the general permit.
 - 1.2.6 This permit does not preempt or supersede the authority of local agencies to prohibit, restrict, or control discharges of storm water to storm drain systems or other water courses in their jurisdiction.
- 1.3 Storm water discharges not covered under this permit. The following storm water discharges are not provided coverage under this permit:
 - 1.3.1 Storm water discharges from large construction activities with individual WYPDES permits that include storm water control requirements.

- 1.3.2 Storm water discharges from large construction activities covered under another industry- or geographically-specific general WYPDES permit.
- 1.3.3 Storm water discharges that are commingled with wastewaters.
- 1.3.4 The placement of fill into waters of the state requiring local, state or federal authorizations (such as a federal Section 404 permit from the US Army Corps of Engineers).
- 1.3.5 Storm water discharges associated with industrial activity (including mineral mining activity), except for discharges from dedicated borrow areas and asphalt or concrete batch plants as described in Parts 1.2.2 and 1.2.3, are not eligible for coverage under this permit. Storm water discharges associated with industrial activity must be covered under another WYPDES storm water permit such as the industrial general permit (IGP) or the mineral mining general permit (MMGP). In certain limited situations, such as where there is a potential discharge to a class 1 water, an individual storm water permit may be required.
- 1.3.6 Storm water discharges that the Department determines will cause, or have the reasonable potential to cause or contribute to, violations of water quality standards or impairments of water quality.

Part 2 Definitions

- 2.1 **"Access Roads"** means private roads which are exclusively or primarily dedicated for use by the permittee.
- 2.2 **"Administrator"** means the Administrator of the Water Quality Division, Wyoming Department of Environmental Quality.
- 2.3 **"Best Management Practices"** ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. Best Management Practices (BMPs) also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.
- 2.4 **"Common Plan of Development or Sale"** means projects that may occur in multiple locations and/or in multiple phases, but are part of a single, overall plan. Documentation of common plans may include announcements or other documentation (including signs, public notices, hearings, marketing information, drawings, financing records, permit applications, zoning request, maps, etc.) or physical demarcations (including boundary signs, lot stakes, surveyor markings, etc.) indicating that construction activity will or may occur in the area.
- 2.5 **"CWA"** means Clean Water Act or the federal Water Pollution Control Act, 33 USC 1251, *et seq.*
- 2.6 **"Department"** means the Department of Environmental Quality

- 2.7 **"Energy Dissipation"** means methods employed at pipe outlets to prevent erosion by dissipating or lowering the energy of the discharge. Examples include, but are not limited to, concrete aprons, riprap, splash pads, and gabions which are designed and installed to prevent erosion.
- 2.8 **"Finally Stabilized"** means that all soil disturbing activities at the site have been completed, and a uniform perennial vegetative cover with a density of 70% of the native background vegetative cover for the area has been established on all disturbed unpaved areas and areas not covered by permanent structures.
- 2.9 **"Large Construction Activity"** means any clearing, grading, or excavation project which will disturb five or more (not necessarily contiguous) surface acres. Large construction activity also includes the disturbance of less than five acres of total land area when that disturbance is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more. *Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.*
- 2.10 **"NOI"** means Notice of Intent.
- 2.11 **"NOT"** means Notice of Termination
- 2.12 **"NOTA"** means Notice of Transfer and Acceptance
- 2.13 **"Operator"** is the company, individual, or organization that has day-to-day supervision and control of activities occurring at the construction site. This can be the owner, developer, the general contractor, or, in some cases, the agent of one of these parties. The operator is responsible for ensuring compliance with all conditions of the permit.
- 2.14 **"Related Effluents"** means discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushing; irrigation drainage; lawn watering; routine external building wash down which does not use detergents; pavement wash waters where spills or leaks of toxic or hazardous materials are not present and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.
- 2.15 **"Severe Property Damage"** means substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
- 2.16 **"Spill Prevention Control and Countermeasure Plan (SPCC)"** is a federal requirement (40CFR112) for facilities that store specific amounts of petroleum products. The plan is not a state requirement, but may be referenced as part of the SWPPP when appropriate.

- 2.17 **"Storm Water"** means storm water runoff, snow melt runoff, and surface runoff and drainage.
- 2.18 **"Storm Water Associated with Large Construction Activity"** means the discharge of storm water from construction activities, including clearing, grading, and excavating, that result in land disturbance of five or more acres of total land area. Large construction area also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger plan will ultimately disturb five acres or more.
- 2.19 **"Storm water Associated with Industrial Activity"** means storm water discharges from any of the activities defined in Section 6 (g) (ii) of Chapter 2 of the Wyoming Water Quality Rules and Regulations.
- 2.20 **"Surface Waters of the State"** means all permanent and intermittent defined drainages and lakes, reservoirs, and wetlands which are not manmade retention ponds used for the treatment of municipal, agricultural or industrial waste; and all other bodies of surface water, either public or private which are wholly or partially within the boundaries of the State.
- 2.21 **"SWPPP"** means Storm Water Pollution Prevention Plan.
- 2.22 **"Temporary Stabilization"** means the exposed ground surface has been covered with appropriate materials to provide temporary stabilization of the surface from water or wind erosion. Materials include, but are not limited to, mulch, riprap, erosion control mats or blankets and temporary cover crops. Surface roughening may also be considered a temporary stabilization method. Seeding alone is not considered stabilization. Temporary stabilization is not a substitute for the more permanent "final stabilization."
- 2.23 **"Wyoming Surface Water Quality Standards"** refers to Wyoming Water Quality Rules and Regulations, Chapter 1 (surface water standards).

Part 3 Obtaining Authorization to Discharge – Notice of Intent

- 3.1 **Deadline to apply.** Except as authorized in Part 3.2 of this permit, an operator seeking authorization under this permit shall submit a completed Notice of Intent, on a form provided by the Administrator, to the Department at least 30 days prior to commencing construction activities.
- 3.2 **Expedited processing.** With just cause, and at the request of the operator, the Administrator may:
- 3.2.1 allow the operator of a large construction activity to submit a NOI to the Administrator no later than 10 days prior to commencing construction activities; and
- 3.2.2 notify the applicant of the approval or disapproval of coverage under this permit within 10 days of receipt of the NOI.

- 3.3 Requirement to submit an NOI. An NOI must be submitted to Department and coverage under this permit must be authorized in writing prior to the start of soil disturbing activities.
- 3.4 NOI contents. The NOI shall include the following information, at a minimum:
- 3.4.1 The name of the company, entity, or individual seeking a permit;
 - 3.4.2 Mailing address and telephone number of the company, entity or individual;
 - 3.4.3 The facility name, location, telephone number and WYDOT project number, if applicable;
 - 3.4.4 Location of the covered facility expressed as quarter/quarter, section, township and range or street address;
 - 3.4.5 Location of the covered facility expressed as latitude and longitude to the nearest 15 seconds;
 - 3.4.6 Estimated project start and completion dates;
 - 3.4.7 Estimated acres of disturbance;
 - 3.4.8 Names of receiving waters and, if applicable, note if discharge will be to a municipal storm sewer and for which municipality;
 - 3.4.9 Certification that a storm water pollution prevention plan (SWPPP, see Part 7 for requirements) has been developed or will be developed prior to the start of construction;
 - 3.4.10 A description of the activities conducted by the applicant which require it to obtain coverage under this permit;
 - 3.4.11 A site map that shows the boundaries of expected land clearing, storm water drainage patterns or topography and nearby drainages and/or storm sewers that could receive storm water from the permitted facility; and
 - 3.4.12 Name and signature in accordance with Part 10.7.
- 3.5 Agreement to comply. Submission of the NOI to the Department constitutes full agreement by the operator to meet and comply with all requirements of this general permit.
- 3.6 Projects disturbing more than 100 acres. For any disturbance greater than 100 acres, the permittee must submit the SWPPP with the NOI.
- 3.7 Projects that may discharge to class 1 waters. The facility SWPPP must be submitted to the Department with the NOI for any project where there is a potential to discharge storm water to class 1 surface waters. (See Appendix A for a list of Class 1 waters.) Submission must be at least 30 days prior to commencing construction activities. Large construction

activities that have the potential to discharge to class 1 waters are subject to a site visit by Department personnel prior to issuing coverage under this general permit. Site visits are weather-dependent. For example site visits will not typically be scheduled to areas with heavy snow cover and a visit may not always be possible within 30 days of an NOI and SWPPP submittal.

- 3.8 Denial of coverage. Except as noted in Part 3.2, the Administrator shall notify the applicant of the approval or disapproval of coverage under this permit within 30 days of receipt of the NOI. In the case of disapproval, the Administrator shall specify in writing the reason(s) for the disapproval and action(s), if any, that the applicant can take to gain approval.
- 3.9 Individual permit required. If, after evaluation of the NOI and any additional information requested for the evaluation, it is found that this general permit is not applicable to the operation, the application will be processed as an application for an individual permit. The applicant will be notified of the Administrator's decision to deny authorization under the general permit and require coverage under an individual permit. Additional information may be required and a minimum of 120 days will be required to process the individual application and issue the permit.
- 3.10 Temporary coverage. The Administrator reserves the right to issue temporary coverage under this general permit to cover storm water discharges from projects required to obtain coverage under an individual permit.
- 3.11 Continuation of coverage under a renewed permit
- 3.11.1 Storm water discharges associated with large construction activities that have active coverage under the previous general storm water permit for construction (issued in 2002 and expiring August 31, 2006) are automatically covered under this permit until November 30, 2006.
- 3.11.2 All permittees that receive coverage under this automatic process must submit an NOI, or other form as provided by the Administrator, to this office by **October 31, 2006 to maintain coverage under this general permit.** Operators who fail to do so will have their coverage under this permit terminated. Construction sites that are not "finally stabilized," and where coverage lapses, may be subject to an enforcement action.

Part 4 Change of Operator

- 4.1 Notice of transfer and acceptance (NOTA). When responsibility for storm water discharges for a large construction activity changes from one operator to another, the current and future permittee shall submit a completed Notice of Transfer and Acceptance (NOTA). The certification must be signed by both parties in accordance with section 10.7 of this permit. The certification shall be submitted to DEQ within 14 days of the change in operator. The transfer form is available from DEQ. If requested by the Administrator, a NOI shall be submitted by the new permittee and a NOT shall be submitted by the current permittee.

- 4.2 Amendments to the SWPPP. The new operator must comply with all conditions in this permit and with all provisions of the existing SWPPP until such time as the existing SWPPP is amended or replaced by a new SWPPP. If the personnel responsible for implementing the SWPPP change, the changes must be made to the SWPPP within 30 days of transfer of operational control.
- 4.3 Transfer of properties within a development. For the transfer of properties within a development (e.g., an original developer sells portions of the property to various homebuilders), the new owner(s) must obtain permit coverage for their activity on that property by submitting a Notice of Intent (NOI) for a separate authorization under this general permit.
- 4.3.1 The new operator may develop and implement a new SWPPP for their parcel(s) that meets all the terms and conditions of this permit, or
- 4.3.2 The new operator may adopt and continue to implement the original SWPPP provided it is adequate for the new activities that will occur onsite.
- 4.3.3 With either option, the permittee shall ensure, either directly or through coordination with other operators that their SWPPP meets all terms and conditions of this permit and their activities do not interfere with another party's erosion and sediment control practices.

Part 5 Notice of Termination

- 5.1 Permittees wishing to terminate coverage under this permit must submit a Notice of Termination (NOT) identifying the facility and the reason permit coverage is no longer required. The NOT shall be signed in accordance with Part 10.7.
- 5.2 Compliance with the conditions of this permit is required until an NOT has been submitted and accepted by the Department.
- 5.3 An NOT may only be submitted when one of the following conditions has been met:
- 5.3.1 Final stabilization (see part 2.8 for definition) has been achieved on all parts of the site for which the permittee is responsible.
- 5.3.2 For individual lots in residential construction only:
- 5.3.2.1 Final stabilization has been achieved as defined in Part 2.8 or
- 5.3.2.2 Temporary erosion protection and down gradient perimeter control for individual lots has been completed and the residence has been transferred to the homeowner. Additionally, the permittee shall provide a copy of a "homeowner fact sheet" to the homeowner to inform the owner of the need for, and the benefits of, erosion and sediment control and final stabilization.

- 5.3.3 Final stabilization for producing oil and gas facilities does not require revegetation in the area within permanently installed well anchor points, the travel surface of a site access road, and areas within established fire walls surrounding tank batteries. All other areas must be revegetated or covered by permanent materials (paving, gravel, etc.) to be considered finally stabilized. Surfaces left unpaved must be designed and prepared in a manner that will prevent ongoing erosion problems. The permittee may be required to re-extend coverage under this permit to areas with erosion problems.

Part 6 Fees

- 6.1 All WYPDES general permit authorizations are subject to a \$100 annual permit fee for as long as the authorization is active or until the general permit expires. The annual billing cycle is based on the state's fiscal year from July 1 to June 30. See the Wyoming Environmental Quality Act §35-11-312 for further information.
- 6.1.1 All parties who have held an authorization under this permit for any part of the 12 months prior to June 30th will be billed \$100 per authorization held. The fee is not prorated for part year ownership.
- 6.1.2 When an authorization is transferred all parties who held the authorization in that fiscal year will receive invoices for \$100. The fee is not prorated for part-year ownership.

Part 7 Storm Water Pollution Prevention Plan

- 7.1 Preparation. Prior to beginning construction activities, an operator shall prepare a "Storm Water Pollution Prevention Plan" (SWPPP) for the construction activity. The primary objective of the plan is to inventory pollutants which have potential to leave the construction site in storm water runoff, identify Best Management Practices (BMPs) which, when implemented, will eliminate or minimize pollutants in runoff and meet the terms and conditions of this permit. Guidance materials for best management practice (BMP) selection and implementation can be found on the web, including the DEQ web page at http://deq.state.wy.us/wqd/WYPDES_Permitting/WYPDES_Storm_Water/stormwater.asp. Facilities must implement the provisions of their SWPPP as a condition of this permit.
- 7.2 Content. At a minimum, the SWPPP shall include the following information:
- 7.2.1 *SWPPP Administrator.* Each SWPPP shall identify a specific individual or individuals within the facility organization that are responsible for developing the storm water SWPPP and assisting the facility manager in its implementation, maintenance, and revision. The SWPPP shall clearly identify the responsibility of plan administration, either by name or job title.
- 7.2.2 *Site Description*
- 7.2.2.1 A brief description of the nature of the construction activity.
- 7.2.2.2 The proposed sequence of major activities and a planned completion date.

- 7.2.2.3 An estimate of the total area of the site and an estimate of the area expected to undergo clearing, excavation or grading, including off-site borrow areas, access roads, and staging/storage areas.
- 7.2.2.4 A brief description of the existing vegetation at the site and an estimate of the percent of vegetative ground cover.
- 7.2.2.5 The location and description of any other potential pollution sources including, but not limited to, vehicle fueling, storage of fertilizers, chemicals or paint.
- 7.2.2.6 The name of the drainage or water body (surface water(s) of the state) that may receive a storm water discharge from the construction activity and the size, type, and location of any outfall. If the discharge is to a municipal separate storm sewer, indicate the name of the municipal owner of that system, the location of the storm sewer outfall, and the drainage or water body that will receive storm water discharges from the municipal outfall.

7.2.3 Site Map. Each plan shall provide a site map or maps that indicate, at a minimum:

- 7.2.3.1 Construction site boundaries.
- 7.2.3.2 All areas of soil disturbance.
- 7.2.3.3 The location of surface waters of the state as defined in Part 2.20 of this permit. These include springs, streams, wetlands, lakes and any defined drainages that could receive storm water discharge from the construction site.
- 7.2.3.4 Areas used for storage of building materials, soils, wastes, fuel, and areas used for concrete washout.
- 7.2.3.5 Locations of proposed or existing storm water controls.
- 7.2.3.6 Site topography or storm water drainage patterns.
- 7.2.3.7 Where included as part of the permitted project, include site maps for offsite concrete/asphalt batch plants, borrow areas and/or fill material disposal areas, and equipment/materials staging and storage areas.

7.2.4 Best Management Practices (BMPs). The plan shall include a narrative description of appropriate controls and measures that will be implemented before, during, and after construction.

The plan shall clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures. For example, which controls will be implemented during each of the following stages of construction: clearing and grubbing necessary for perimeter controls, initiation of perimeter controls, remaining clearing and grubbing, road grading, storm drain installation, final grading, stabilization, and removal of control measures.

The description of controls shall address the following minimum components:

- 7.2.4.1 **EROSION AND SEDIMENT CONTROLS.** An erosion and sediment control plan shall identify appropriate control measures for each major phase of construction.

- 7.2.4.1.1 Erosion prevention BMPs. The goal of erosion prevention is preventing soil (or sediment) movement and keeping it at its original location within the construction site. Each SWPPP shall provide best management practices (BMPs) for erosion prevention wherever practical. Examples of BMPs for erosion prevention include, but are not limited to:
- Preserving existing vegetation,
 - Scheduling
 - Surface roughening
 - Permanent or temporary seeding and planting
 - Mulches, soil binders or tackifiers, erosion control blankets and mats
 - Wind erosion control
 - Storm water diversion practices upslope of a construction site
 - Pipe slope drains
 - Outlet protection
- 7.2.4.1.2 Sedimentation control. Sedimentation occurs when soil is eroded and transported from its original location. The goal of sedimentation control is to prevent sediment from leaving the construction site and, more particularly, from entering surface waters of the state or storm drain inlets. Every SWPPP shall describe adequate BMPs to achieve sedimentation control. Examples of BMPs for sedimentation control include, but are not limited to:
- Sediment barriers such as straw bales, gravel berms, silt fences, fiber rolls or wattles.
 - Sediment traps and basins
 - Storm drain inlet protection
 - Entrance/exit tracking controls
 - Undercut lots where curb and gutter are installed
 - Vegetated buffer strips
 - Grassed waterways
 - Water bars and water wings
- 7.2.4.1.3 Temporary erosion protection. Temporary stabilization (such as cover crop plantings, mulching or erosion controls blankets, surface roughening, etc.) for exposed soil areas where activities have permanently or temporarily ceased should be installed whenever practicable in areas where further work is not expected for 28 days or more. Areas to be protected include graded slopes, ditches, berms and soil stockpiles.
- 7.2.4.1.4 Best management practice selection, installation and maintenance. All BMPs must be properly selected, installed and

maintained in accordance with the manufacturer's specifications and good engineering practices. (It is not required that the SWPPP be prepared or certified by a registered engineer.) If periodic inspections or other information indicates a practice has been used inappropriately or incorrectly the permittee must modify or replace the control.

7.2.4.1.5 Storm water best management practices are expected to withstand and function properly during precipitation events up to a 2-year, 24-hour storm event. Visible and measurable erosion (see Part 8.4) that leaves the construction site from such storm events should be minimal. The 2-year, 24-hour storm event in Wyoming ranges from 0.8 to 2.6 inches. An isopluvial map of the 2-year, 24-hour storm depth is available on the DEQ storm water website. Permittees may substitute equivalent data published by the local municipality or regulatory agency.

7.2.4.2 **CONSTRUCTION SITE DEWATERING.** The SWPPP must specify BMPs for discharges from construction site dewatering. Discharges must meet the conditions specified in Part 8.8 including the use of settling or filtration techniques as appropriate and the use of velocity dissipation devices at the outlet.

7.2.4.3 **POST-CONSTRUCTION CONTROLS.** A description of the temporary stabilization measures that will be implemented after construction is complete and until final stabilization is achieved.

7.2.4.4 **OPERATIONAL CONTROLS.** The plan shall describe best management practices (BMPs) used in day-to-day operations on the project site that reduce the contribution of pollutants in storm water runoff.

7.2.4.4.1 Good housekeeping BMPs to maintain a clean and orderly facility. At a minimum, the SWPPP should address litter, debris, chemicals, fertilizers and sanitary wastes. This includes measures to remove sediment that has left the construction site.

7.2.4.4.2 Bulk storage of petroleum products. The SWPPP shall describe specific practices for the bulk storage of petroleum products.

a. The practices shall provide adequate protection so as to contain all spills and prevent any spilled materials from entering waters of the state or municipal storm sewer systems.

b. The SWPPP shall describe appropriate practices for addressing a spill including methods of handling

and disposing spilled products and contaminated soils.

- c. The facility spill prevention control and countermeasures (SPCC) plan may be referenced in the SWPPP as fulfillment of this requirement. The SPCC should be attached to the SWPPP if it is referenced.

7.2.4.4.3 Concrete washout. Concrete wash waters shall not enter surface waters of the state or municipal storm drains. The SWPPP must provide for specific practices that will protect surface waters and storm drains.

7.2.4.4.4 The SWPPP shall describe appropriate BMPs to control storm water pollution from portable concrete or asphalt batch plants covered under this permit.

7.2.4.5 **MAINTENANCE.** All practices identified in the SWPPP must be maintained in effective operating condition. The plan must indicate, as appropriate, the intervals or conditions upon which BMPs shall be maintained. Maintenance shall also occur whenever periodic inspections identify BMPs that are not operating effectively. Maintenance shall be accomplished as soon as is practical.

7.2.4.6 **INSPECTIONS.** The plan must provide for site inspections to monitor the condition of storm water outlets and the effectiveness of BMPs. The permittee shall ensure that personnel conducting site inspections are familiar with the requirements of the SWPPP and proper operation and maintenance of all implemented BMPs. All inspections shall be conducted in accordance with Part 9 and signed in accordance with Part 10.7.

7.2.4.7 **SIGNATURE.** All SWPPPs must be signed in accordance with Part 10.7 of this permit.

7.3 Plan amendment. The permittee shall modify the plan whenever there is a change in design, construction, operation, or maintenance that changes the potential for the discharge of pollutants to waters of the state. The plan shall also be modified if it proves ineffective in eliminating or minimizing pollutants present in storm water. The most current version of the SWPPP must be retained on site or located as described in Part 7.5. The SWPPP may be reviewed by the Administrator as described below.

7.4 SWPPP implementation

7.4.1 *Projects begun prior to September 1, 2006.* Permittees with construction activities authorized to discharge storm water under the previous general permit issued in 2002 and now replaced by this permit must update their current SWPPP to comply with the requirements of this permit no later than 90 days after the effective date of authorization under this permit. Permittees shall continue to implement existing SWPPPs developed under the previous permit until the SWPPP has been updated and implemented.

7.4.2 *Projects beginning after September 1, 2006.* For projects that begin after the effective date of this permit, the SWPPP must be implemented immediately and throughout the duration of the construction activity and up until the site is finally stabilized.

7.5 Plan retention. The SWPPP shall be retained at the construction site during active construction. When the project is shut down for the season or at the completion of construction the SWPPP may be kept offsite. For large, field-wide authorizations in the oil and gas industry where relatively small, discreet disturbances occur periodically over a large area, operators may choose to keep only the portions of the SWPPP relevant to the current active construction area on that site, while the complete SWPPP remains at an off-site location.

7.5.1 The location of an off-site SWPPP must be posted on site. The posting shall note the location of the SWPPP, a contact phone number and the storm water authorization number; or

7.5.2 If posting the offsite location at the construction site is impractical due to remote location or the facility is impractically large for a posting, the operator may send a brief letter to the DEQ Storm Water Coordinator specifying the site authorization number, location of the SWPPP and a contact telephone number for a person with access to the SWPPP.

7.5.3 For all SWPPPs the operator must provide reasonable local access to the plan during normal working hours. The permittee shall make the SWPPP available upon request to the Administrator or agent thereof; any federal, state or local agency; interested members of the public; local government officials; or to the operator of a municipal separate storm sewer receiving discharges from the site.

7.5.4 The permit does not require that free copies of the plan be provided to interested members of the public, only that they have access to view the document and copy it at their own expense. The copy of the SWPPP must be made available to the Administrator, or authorized agent, for review at the time of an onsite inspection.

7.6 Plan review. The Administrator may request any SWPPP be submitted to the department for review. If the Administrator elects to review the SWPPP and finds that it is deficient, the permittee shall modify the plan as directed and within the time specified by the Administrator.

- 7.7 Employee training. Appropriate personnel of all levels of responsibility shall be informed of erosion and sediment control, spill response, good housekeeping, and materials management practices identified in the SWPPP plan for reduction of pollutants in storm water runoff.

PART 8 Additional Terms and Conditions

- 8.1 Quality of discharge. Storm water discharges associated with construction activities shall not cause pollution, contamination or degradation to waters of the state.
- 8.2 Effluent limits.
- 8.2.1 Those best management practices (BMPs) or other control measures specified in the SWPPP shall ensure that the storm water discharges do not cause a violation of Wyoming Water Quality Standards.
- 8.2.2 The quality of permitted storm water discharges shall reflect the best which is attainable through the proper implementation of all items in the facility SWPPP.
- 8.3 Best management practice selection, installation and maintenance. All BMPs must be properly selected, installed and maintained in accordance with the manufacturer's specifications and good engineering practices. (It is not required that the SWPPP be prepared or certified by a registered engineer.) If periodic inspections or other information indicates a practice has been used inappropriately or incorrectly the permittee must modify or replace the control.
- 8.4 Visible or measurable erosion. Visible or measurable erosion, associated with a construction activity, which leaves the construction site as a result of inadequate or ineffective SWPPP design or maintenance of BMPs is prohibited. Visible or measurable erosion is defined as:
- 8.4.1 Deposits of mud, dirt, sediment, or similar material exceeding one cubic foot volume in any area of 100 square feet or less on public or private roads, adjacent property, or into waters of the state by deliberate actions or as a result of water or wind erosion; or
- 8.4.2 Evidence of concentrated flows of water over bare soils, turbid or sediment-laden flows, or evidence of on-site erosion on bare slopes, where runoff of water is not filtered, treated, or captured on the site using BMPs specified in the SWPPP; or
- 8.4.3 Earth slides, mud flows, earth sloughing, or other earth movement which leaves the construction site.
- 8.5 Recovery of offsite sediment. If any measurable quantity of sediment leaves the construction site because of structural failure or inadequate design of the BMPs, the sediment shall be placed back on site or properly disposed of, as soon as is prudent. Under

no conditions shall the sediment be washed into municipal storm sewers or surface waters of the state.

- 8.6 Concrete washout. Concrete wash water shall not be discharged to waters of the state or to storm sewer systems.
- 8.7 Bulk storage of petroleum products. Bulk storage for petroleum products and other chemicals shall have adequate protection so as to contain all spills and prevent any spilled materials from entering waters of the state or municipal storm sewer systems.
- 8.8 Construction site dewatering. Pumped discharges from construction sites covered under this permit are limited to storm water and minor amounts of ground water. A separate permit must be obtained for the discharge of water from other sources, including ground water. Where there is sufficient ground water present such that it must be pumped from the construction site, those discharges do not meet the definition of minor amounts of ground water and must be covered under a separate WYPDES permit specifically for those discharges.
- 8.8.1 The permittee must operate the discharge to minimize the release of sediment.
 - 8.8.2 Pumped water that may be turbid or sediment laden must be treated with appropriate BMPs, such that the discharge does not:
 - 8.8.2.1 Cause a violation of water quality standards as defined in Chapter 1 of the Wyoming Water Quality Rules and Regulations.
 - 8.8.2.2 Adversely affect downstream landowners.
 - 8.8.2.3 Cause erosion or scouring at the outlet or in the receiving water.
 - 8.8.3. The discharge must be dispersed over appropriate energy dissipation devices such as rock riprap, sand bags, plastic sheeting, or equivalent.
 - 8.8.4 Significant groundwater. ***The general rule of thumb for determining what ground water is non-significant is as follows:*** If an operator is able to work in a trench or excavation without dewatering during dry weather and only needs to dewater because of a rain or snow melt event, then the ground water can be considered non-significant. If an operator is finding they must dewater even though there has been no precipitation, then a WYPDES wastewater permit (temporary or individual) is required. Any operator who is unsure of whether or not his ground water is non-significant should secure separate coverage under the WYPDES general permit for temporary discharges or an individual wastewater permit for the dewatering operation.
- 8.9 Temporary stabilization (such as cover crop plantings, mulching or erosion controls blankets, surface roughening, etc.) for exposed soil areas where activities have permanently or temporarily ceased should be installed whenever practicable in areas where further work

is not expected for 28 days or more. Areas to be protected include graded slopes, ditches, berms and soil stockpiles.

- 8.10 Minimum storm size for BMPs. Storm water best management practices are expected to withstand and function properly during precipitation events up to a 2-year, 24-hour storm event. Visible and measurable erosion (see Part 8.4) that leaves the construction site from such storm events should be minimal. The 2-year, 24-hour storm event in Wyoming ranges from 0.8 to 2.6 inches. An isopluvial map of the 2-year, 24-hour storm depth is available on the DEQ storm water website. Permittees may substitute equivalent data published by the local municipality or regulatory agency.
- 8.11 Allowable discharges. All discharges covered by this permit shall be composed entirely of storm water associated with construction activity or related effluents (see definitions in Part 2). Discharges which include material other than storm water associated with construction activity, must be in compliance with a WYPDES permit (other than this permit) issued for the discharge.
- 8.12 Sanitary facilities. Sanitary sewage facilities (typically portable) will be operated in compliance with all applicable state and local waste disposal, sanitary sewer, or septic system regulations.
- 8.13 Requirements of other agencies. All storm water discharges must comply with erosion control or other requirements, policies, or guidelines of other local, state or federal agencies.

Part 9 Self Monitoring and Inspection Requirements

9.1 Site inspections

- 9.1.1 *Active construction sites.* During active construction inspections must be conducted in accordance with one of the two schedules listed below, unless the project has an alternate inspection schedule approved by the administrator. You must specify in your SWPPP which inspection schedule you will use.
- 9.1.1.1 During active construction, qualified personnel (provided by the permittee) shall inspect disturbed areas, control measures, and locations where vehicles enter or exit the site, at least once every 14 calendar days and within 24 hours of any precipitation and/or snow melt event which exceeds 0.5 inches. The permittee shall have the option of maintaining a rain gauge at their site or using the nearest National Weather Service precipitation gauge station. Any rain measurement shall be taken from an area within 10 miles of the construction project,
OR
- 9.1.1.2 At least once every seven days.
- 9.1.2 *Inactive construction sites.* During seasonal shutdowns and during the period following completion of construction, but prior to return of the site to “finally stabilized”

conditions and termination of coverage under this permit, qualified personnel (provided by the permittee) shall inspect the site at least once every month.

- 9.1.3 Qualified person. A qualified person is one who is familiar with the requirements of the SWPPP, permit conditions and the proper operation and maintenance of all implemented BMPs.
- 9.1.4 Alternative inspection plans and schedules. A permittee may submit an alternative inspection plan for long, narrow, linear construction projects such as pipeline or utility line installation, and other projects in remote areas where vehicle traffic is restricted or could compromise native vegetation or stabilization measures. A copy of the SWPPP and alternate inspection plan must be submitted to the Department at least 30 days prior to implementing the plan. An alternative plan must provide for the timely recognition and repair of erosion or sedimentation.
- 9.1.5 Where there are areas that have achieved final stabilization the operator may document such in the facility SWPPP and omit those areas from further routine inspections. *(Examples of where this provision may apply include specific well pads or pipeline segments that have been stabilized that are part of a larger plan of development covered under a single storm water permit. Or the early phases of a large, phased subdivision development which may be stabilized before the later phases are completed.)*
- 9.1.6 Records. The operator shall keep a record of inspections and maintenance. The inspection record shall include:
- 9.1.6.1 Storm water outfalls shall be observed to determine whether or not measurable quantities of sediment or other pollutants have been or are being transported off site.
 - 9.1.6.2 BMPs shall be assessed to determine if they are functioning properly or if they are in need of repair or maintenance. If the report describes deficiencies in pollution control structures or procedures, such deficiencies shall be corrected immediately.
 - 9.1.6.3 A brief description of measures taken to correct deficiencies shall be recorded.
 - 9.1.6.4 When an inspection does not identify any incidents of non-compliance, the report shall contain a certification that the site is in compliance with the SWPPP and this permit.
 - 9.1.6.5 The date and inspector identity shall also be recorded. This record shall be signed in accordance with Part 10.7 of the permit and made available to the Administrator upon request.

- 9.1.7 *Severe weather exception.* If any inspection is not possible due to severe weather or other dangerous conditions, the inspection report must document why the inspection did not occur, and the inspection must be conducted as soon as conditions allow.
- 9.1.8 *Winter Conditions.* Inspections on inactive construction sites, as described above in 9.1.2, will not be required where snow cover or frozen ground conditions exists over the entire site for an extended period and melting conditions do not exist. This exemption is applicable *only* during the period where melting conditions do not exist. Regular inspections, as describe above, are required at all other times.
- 9.2 Retention of reports. Copies of the inspection reports shall be retained with the SWPPP and copies shall be provided to the Administrator upon request Such reports shall be retained by the permittee for a minimum of three years.
- 9.3 Collection and submission of self monitoring information. Upon written notification from the Administrator, the permittee shall collect and report storm water effluent and/or ambient water quality data of the type and at the frequency specified by the Administrator.
- 9.4 Construction project identification. A copy of the authorization letter shall be posted at the construction site in a prominent and safe place for public viewing during regular business hours.

Part 10 Standard Permit Conditions

- 10.1 Duty to comply. The permittee must comply with all conditions of this permit, and is responsible for ensuring any subcontractors, employees or other persons associated with the construction activity comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Chapter 2 of the Wyoming Water Quality Rules and Regulations, the Wyoming Environmental Quality Act and the CWA and may be grounds for enforcement action, permit termination, revocation, or modification, or for denial of a permit renewal application. The permittee shall give the Administrator of the Water Quality Division advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.
- 10.2 Penalties for violations of permit conditions. Article 9 of the Wyoming Environmental Quality Act provides significant penalties for any person who violates a permit condition. Any person who violates any condition of this permit is subject to a civil penalty not to exceed \$10,000 per day of such violation, as well as other relief. Knowingly or willfully violating the permit may result in criminal penalties of up to \$25,000 per day of violation and/or imprisonment for up to one year. Criminal penalties for subsequent knowing or willful violations of the permit may be up to \$50,000 per day of violation and/or imprisonment for up to two years.
- 10.3 Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

- 10.4 Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- 10.5 Duty to provide information. The permittee shall furnish to the Administrator, within a reasonable time, any information which the Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Administrator, upon request, copies of records required to be kept by this permit.
- 10.6 Other information. When the permittee becomes aware that he or she failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Administrator, he or she shall promptly submit such facts or information.
- 10.7 Signatory requirements. All NOIs, NOTs, NOTAs, SWPPPS, reports, and other information submitted to the Administrator shall be signed and certified.
- 10.7.1 All permit applications shall be signed as follows:
- 10.7.1.1 For a corporation: A principal executive officer of at least the level of vice president, or the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the overall operation of the facility from which the discharge originates;
 - 10.7.1.2 For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - 10.7.1.3 For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.
- 10.7.2 All reports required by the permit and other information requested by the Administrator shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- 10.7.2.1 The authorization is made in writing by a person described above and submitted to the Administrator; and
 - 10.7.2.2 The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position.

10.7.3 If an authorization under Part 10.7.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part 10.7.2 must be submitted to the Administrator prior to or together with any reports, information or applications to be signed by an authorized representative.

10.7.4 Any person signing documents required by this permit shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

10.8 Penalties for falsification of reports and monitoring systems. The federal act provides that any person who knowingly makes any false statement, representation or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation or by imprisonment for not more than two years per violation or both.

10.9 Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA.

According to Chapter 4 of the Wyoming Water Quality Rules and Regulations, any spill or other release of hazardous substances, fuels, oils or other petroleum product must be contained and cleaned up in a timely and diligent manner. Any spill or release of more than 25 gallons, or which results in a visible sheen on water, or a visible deposit on the bottom or shoreline of any water body, must be reported to the Water Quality Division of the Wyoming Department of Environmental Quality within 24 hours to the department's 24-hour telephone number (307-777-7781). Records of such spills or releases must be maintained for at least three years.

10.10 Property rights. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

10.11 Severability. The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

- 10.12 Transfers. This permit is not transferable to any person except after notice to the Administrator. The Administrator may require the operator to apply for and obtain an individual WYPDES permit.
- 10.13 State laws. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state or federal law or regulation.
- 10.14 Facilities operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee when necessary to achieve compliance with the conditions of the permit.
- 10.15 Monitoring and records
- 10.15.1 Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- 10.15.2 The permittee shall retain records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of the reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample measurement, report, or application. This period may be extended by request of the Administrator at any time.
- 10.15.3 Records of monitoring information shall include:
- 10.15.3.1 The date, exact place, and time of sampling or measurements;
- 10.15.3.2 The initials or name(s) of the individual(s) who performed the sampling or measurements;
- 10.15.3.3 The date(s) analyses were performed;
- 10.15.3.4 The time(s) analyses were initiated;
- 10.15.3.5 The initials or name(s) of the individual(s) who performed the analyses;
- 10.15.3.6 References and written procedures for the analytical techniques or methods used; and
- 10.15.3.7 The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

10.15.4 Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

10.16 Availability of reports. Except for data determined to be confidential under Section 308 of the CWA, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Wyoming Department of Environmental Quality and the Regional Administrator of the Environmental Protection Agency. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the CWA.

10.17 Adverse impact. The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any conditions specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

10.18 Bypass or upset of treatment facilities

10.18.1 Bypass means the intentional diversion of storm water around any treatment facility.

10.18.2 Any bypass is prohibited except where unavoidable to prevent loss of life, personal injury, or severe property damage, and there were no feasible alternatives to the bypass.

10.18.2.1 Anticipated bypass

If the permittee knows in advance of the need for a bypass, he or she shall submit prior notice at least ten days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

The Administrator may approve an anticipated bypass, after considering its adverse effects, if the Administrator determines that it will meet the conditions listed above.

10.18.2.2 Unanticipated bypass or upset

The permittee shall submit notice of an unanticipated bypass or upset. Any information regarding the unanticipated bypass or upset shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the bypass or upset and its cause; the period of the bypass or upset, including exact dates and times, and if the bypass or upset has not

been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence.

10.19 Upset conditions

10.19.1 Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the conditions of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improper designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

10.19.2 An upset constitutes an affirmative defense to an action brought for noncompliance with the conditions of this permit if the requirements of paragraph 10.18.2 are met.

10.19.3 A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

10.19.3.1 An upset occurred and that the permittee can identify the specific cause(s) of the upset;

10.19.3.2 The permitted facility was at the time being properly operated;

10.19.3.3 The permittee submitted notice of the upset as required under paragraph 10.18.2 above; and

10.19.3.4 The permittee complied with any remedial measures directed by the Administrator.

10.19.4 In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

10.20 Inspection and entry. The permittee shall allow the Administrator, the Administrator's representative, or an authorized representative of EPA, or in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator of the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

10.20.1 Enter upon the premises where the regulated facility or activity is located or conducted and where records must be kept under the conditions of this permit;

10.20.2 Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

- 10.20.3 Inspect at reasonable times any facilities or equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- 10.20.4 Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the CWA, any substances or parameters at any location.
- 10.21 Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by a permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- 10.22 Reopener clause. For good cause the Administrator may, at any time, require a permittee covered under this permit to obtain an individual permit, coverage under an alternative general permit, or this permit may be modified to include different limitations and/or requirements. Permit modification or revocation will be conducted according to Wyoming Water Quality Rules and Regulations, Chapter 2.
- 10.23 Civil and criminal liability. Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. As long as the conditions related to the provisions of "Bypass of Treatment Facilities" (Part 10.18), "Upset Conditions" (Part 10.19) are satisfied then they shall not be considered as noncompliance.

Appendix A

The following waters are designated Class 1:

1. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
2. The main stem of the Snake River through its entire length above the U.S. Highway 22 Bridge (Wilson Bridge);
3. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;
4. The Main Stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
5. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
6. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortez Dam (Miracle Mile segment);
7. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;
8. The main stem of Sand Creek above the U.S. Highway 14 bridge;
9. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
10. The main stem of the Tongue River, the main stem of the North Fork of the Tongue River, and the main stem of the South Fork of the Tongue River above the U.S. Forest Service Boundary;
11. The main stem of the Sweetwater River above the mouth of Alkali Creek;
12. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
13. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
14. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
15. The main stem of Granite Creek (tributary of the Hoback River) through its entire length;
16. Fremont Lake;
17. Wetlands adjacent to the above listed Class 1 waters.