



**US ARMY CORPS  
OF ENGINEERS  
St. Louis District  
Gateway to Excellence**

# Public Notice

Reply To:  
U.S. Army Corps of Engineers  
Attn: CEMVS-OD-F  
1222 Spruce Street  
St. Louis, MO 63103-2833

Public Notice No.

**P-2668**

Public Notice Date

**April 14, 2008**

Expiration Date

**May 5, 2008**

**Postmaster Please Post Conspicuously Until:**

Interested parties are hereby notified that an application has been received for an **After-the-Fact** Department of the Army permit to approve previously unauthorized clearing, excavation and filling activities that impacted jurisdictional waters of the United States, as described below and shown on the attached figures.

**COMMENTS AND ADDITIONAL INFORMATION:** Comments on the described work should reference the U.S. Army Corps of Engineers File Number shown above and must reach this office no later than the above expiration date of the Public Notice to become part of the record and be considered in the decision. Comments should be mailed to the following address:

U.S. Army Corps of Engineers  
ATTN: CEMVS-OD-F (Charles Frerker)  
1222 Spruce Street  
St. Louis, Missouri 63103-2833

**APPLICANT:** Meurer Brothers, Inc. c/o Eugene Meurer, 5949 Mine Haul Road, Belleville, Illinois 62223, (618) 210-7724.

**LOCATION:** The unauthorized clearing, excavation and filling activities occurred in wetlands and a remnant slough of Silver Creek, located in Part of the West Half of Section 25, Township 1 North, Range 7 West, near Mascoutah, St. Clair County, Illinois (See Attached Location Map). Silver Creek is a perennial creek that flows into the Kaskaskia River, a primary tributary to the Mississippi River, both designated as navigable waters of the United States.

**PROJECT DESCRIPTION:** Meurer Brothers, Inc., request an **After-the-Fact** Department of the Army permit for the unauthorized discharge of fill material into "Waters of the United States", involving mechanized land clearing operations which uprooted wetland vegetation, stockpiled excavated soil in wetlands and deepened, widened and expanded a remnant channel of Silver Creek. The unauthorized activities occurred in November 2007 and were confirmed as violations of Sections 301 [33 U.S.C. 1311] and 404 [33 U.S.C. 1344] of the Clean Water Act (CWA) based on a field inspection completed by Charles Frerker, Regulatory Project Manager. The unauthorized activities are broken down into the following impact areas:

1. The first violation area is an approximate 0.04-acre (1,643 square feet) wooded wetland that was cleared and subsequently filled with 45 cubic yards of rock to construct a parking area. There was no direct access or safe parking when the applicant purchased the property. Access to the constructed parking area is located off of a steep embankment, adjacent to a heavily traveled portion of Illinois Route 177.
2. The second violation area is an approximate 12 to 15 feet wide constructed access road that starts at the above-mentioned parking area and travels northward until reaching the larger impact area. The unauthorized construction of the access road involved clearing an approximate 0.23-acre (10,150 square feet) wooded wetland

and the subsequent placement of approximately 280 cubic yards of brick, rock and broken concrete to serve as base material for the access road.

3. The third violation area is the remnant channel of Silver Creek where approximate 2,000 cubic yards of accumulated sediment was excavated for widening, deepening and expansion purposes. The applicant states the downstream portion of the remnant channel was filling in, which reduced seasonal inundation periods. The applicant contends the excavation was conducted to make the remnant channel more suitable for waterfowl and wildlife. Buttonbush was the dominant vegetation impacted within the remnant channel. Approximately 2.79 acres of scrub-shrub and wooded wetlands were cleared during the widening, deepening and expansion of the remnant channel.
4. The fourth violation area is an approximate 0.82-acre wooded wetland that was bulldozed and subsequently filled with discharge material excavated from the remnant channel. The approximate 0.82-acre cleared wooded wetland is located south of the impacted remnant channel. Logs, root wads and disturbed soil from the clearing activity is currently piled in a windrow along the widened and deepened remnant channel area. The applicant intends to remove the logs and root wads to a pre-approved upland disposal location. The excess material generated by the clearing and excavation activities is currently spread across the cleared wooded wetland area. The applicant requests authorization to thinly spread the excess material over the remainder of the already cleared area. This material would not be at significantly higher elevations than the surrounding wetlands. The applicant wishes to voluntarily restore this area by planting pre-approved wetland tree species on approximate 10 to 15-foot centered spacing. The planting spacing will be determined by the height and size of replacement trees.
5. The fifth violation area is an approximate 0.84-acre wooded wetland located to the north of the widened, deepened and expanded remnant channel. A portion of this wooded wetland was not cleared, however it was directly impacted by the discharge of the excavated materials from the remnant channel impact activities. The discharge of excavated materials in portions of this wooded wetland is approximately one to three feet high. The applicant wishes to voluntarily restore this impact area by removing the discharged excavation material from areas between the standing trees. The applicant seeks permission to thinly spread the excess materials over the above mentioned 0.82-acre cleared wooded wetland area prior to planting the area for restoration purposes. The majority of wooded wetlands within the violation area and surrounding properties are dead or dying. The project area is situated within a large wetland ecosystem of Silver Creek. Hundreds of acres of adjoining wooded wetlands are experiencing high tree mortality due to increased water levels. The applicant contends beaver dams downstream of the area are causing increased and prolonged high water. Allowing the applicant to thinly spread the previously excavated soil material in the restoration/reforestation area will increase survivability in this flood prone area. Thinly spreading the excavated material within the 0.82 acre impact area shouldn't harm surrounding wetlands hydrology, hydric soil characteristics or flow patterns. The entire project area and surrounding lands are frequently inundated at elevations which would be higher than the thinly spread material.
6. The sixth violation area involves the discharge of excavated material into the downstream portion of the widened, deepened and expanded remnant channel. This discharge is an approximate 10-foot by 20-foot by 2 to 3-foot high earthen berm which was installed to create a channel blockage. The purpose of the channel blockage is to create a retention dam that will hold the upstream pool within the remnant channel for longer seasonal flooding. The applicant states the detention berm will inundate approximately three acres of the existing and widened remnant channel and adjacent wetlands. The finished elevation of the retention berm is lower than average flood heights in the area. As such, the berm shouldn't adversely impact hydrology to surrounding wetlands. In addition, no fill material was brought into the project area. All fill material was generated by the unauthorized excavation activities within the Silver Creek floodplain.
7. The seventh and final violation area involves the discharge of approximately 10 cubic yards of earthen fill material in 0.007 acre of the upstream portion of the remnant channel. The purpose of the unauthorized discharge was to construct a low water crossing to serve as an access point to northern portions of the property.

In summary, the applicant requests **After-the-Fact** authorization to allow the parking lot, the access road, the widened, deepened and expanded remnant channel contours, the retention berm constructed in the downstream portion of the remnant channel, and the low water crossing in the upstream portion of the remnant channel to remain in their current configurations. These activities have impacted a total of approximately 4.7 acres of wetlands. The applicant has agreed to restore the 1.66 acre cleared and filled-in wooded wetland areas by removing previous cleared stumps, root wads, and excess fill material. The applicant would voluntarily restore the cleared portions of the wooded wetland impact area by replanting it in native wooded wetland tree species, to be determined by the Corps of Engineers Regulatory Branch. The

applicant has also volunteered to conduct additional mitigation at a nearby off-site location in the Silver Creek watershed and/or if acceptable, to reforest dead timber areas adjacent to the violation area. Since the majority of impacts occurred in dead and dying wooded wetland areas, the Corps of Engineers Regulatory Branch has initially suggested a minimum 2:1 compensatory mitigation ratio for wetland impacts that cannot be voluntarily restored within the violation areas. Color photographs of the violation activities can be viewed online by visiting <http://www.mvs.usace.army.mil/ConOps/permits/pn.htm> and clicking on P-2668.

**ADDITIONAL INFORMATION:** Additional information may be obtained by contacting Charles Frerker, Regulatory Project Manager, U.S. Army Corps of Engineers at electronic mail address: [charles.f.frerker@usace.army.mil](mailto:charles.f.frerker@usace.army.mil)

**AUTHORITY:** This **After-the-Fact** permit review will be processed under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).

**WATER QUALITY CERTIFICATION:** This public notice provides documentation to the Illinois Environmental Protection Agency (IEPA) for water quality certification, or waiver thereof, for the already completed activities in accordance with Section 401 of the Clean Water Act. Issuance of a Certification or waiver would indicate the IEPA believes the activities have not violated applicable water quality standards. The review by the IEPA is conducted in accordance with the Illinois water quality standards under 35 Illinois Administrative Code Subtitle C. The water quality standards provide for the IEPA to review individual projects by providing an antidegradation assessment, which includes an evaluation of alternatives to any proposed increase in pollutant loading that may result from this activity. The "Fact Sheet" containing the antidegradation assessment for this proposed project may be found on the IEPA's web site, at [www.epa.state.il.us/public-notices/](http://www.epa.state.il.us/public-notices/). In the event that the IEPA is unable to publish the "Fact Sheet" corresponding to the timeframe of this Joint Public Notice, a separate public notice and "Fact Sheet" will be published by the IEPA at the web site identified above. You may also obtain a copy of the "Fact Sheet" by contacting the IEPA at the address or telephone number shown below.

Written comments specifically concerning possible impacts to water quality should be addressed to:

Illinois Environmental Protection Agency  
Bureau of Water  
Watershed Management Section  
1021 N. Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

A copy of all written comments should also be provided to the Corps of Engineers. If you have any questions, please contact the IEPA at (217) 782-3362.

**SECTION 404 (b)(1) EVALUATION:** The impact of the activity on the public interest will be evaluated in accordance with the Missouri Department of Natural Resources, Water Pollution Control Program guidelines and the Illinois Environmental Protection Agency's guidelines pursuant to Section 404 (b)(1) of the Clean Water Act.

**IMPACTS TO WATERS OF ILLINOIS:** By issuance of this public notice, the project plans are considered submitted to the Illinois Department of Natural Resources, Office of Water Resources for state approval of the proposed work in accordance with "an Act in relation to the regulation of the rivers, lakes and streams of the State of Illinois" (Ill. Rev. Stat.; Chap. 19, par 52 et seq.). Written comments concerning possible impacts to waters of Illinois should be addressed to Illinois Department of Natural Resources, Office of Water Resources, 3215 Executive Park Drive, Post Office Box 19484, Springfield, Illinois, 62794-9484, with copy provided to the Corps of Engineers.

**PUBLIC HEARING:** Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Request for public hearings shall state, with particularity, the reasons for holding the public hearing.

**ENDANGERED SPECIES:** Based on the timeframe when the applicant cleared the wetland tree species (November to December), a preliminary determination, in compliance with the Endangered Species Act as amended, has been made that the unauthorized clearing and filling activities likely did not adversely affect species designated as threatened or endangered, or adversely affect critical habitat. In order to complete our evaluation, this public notice solicits further comments from the U.S. Fish and Wildlife Service and other interested agencies and individuals.

**CULTURAL RESOURCES:** The St. Louis District will evaluate information provided by the State Historic Preservation Officer and the public in response to this public notice and we may conduct, or require a reconnaissance survey of the project area.

**EVALUATION:** The decision whether to issue this **After-the-Fact** permit will be based on an evaluation of the probable impact including cumulative impacts of the completed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which may reasonably be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors, which may be relevant to the described activity will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion, and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of these proposed activities. Any comments received will be considered by the U.S. Army Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

In accordance with 33 CFR 325.3, it is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the proposed project.

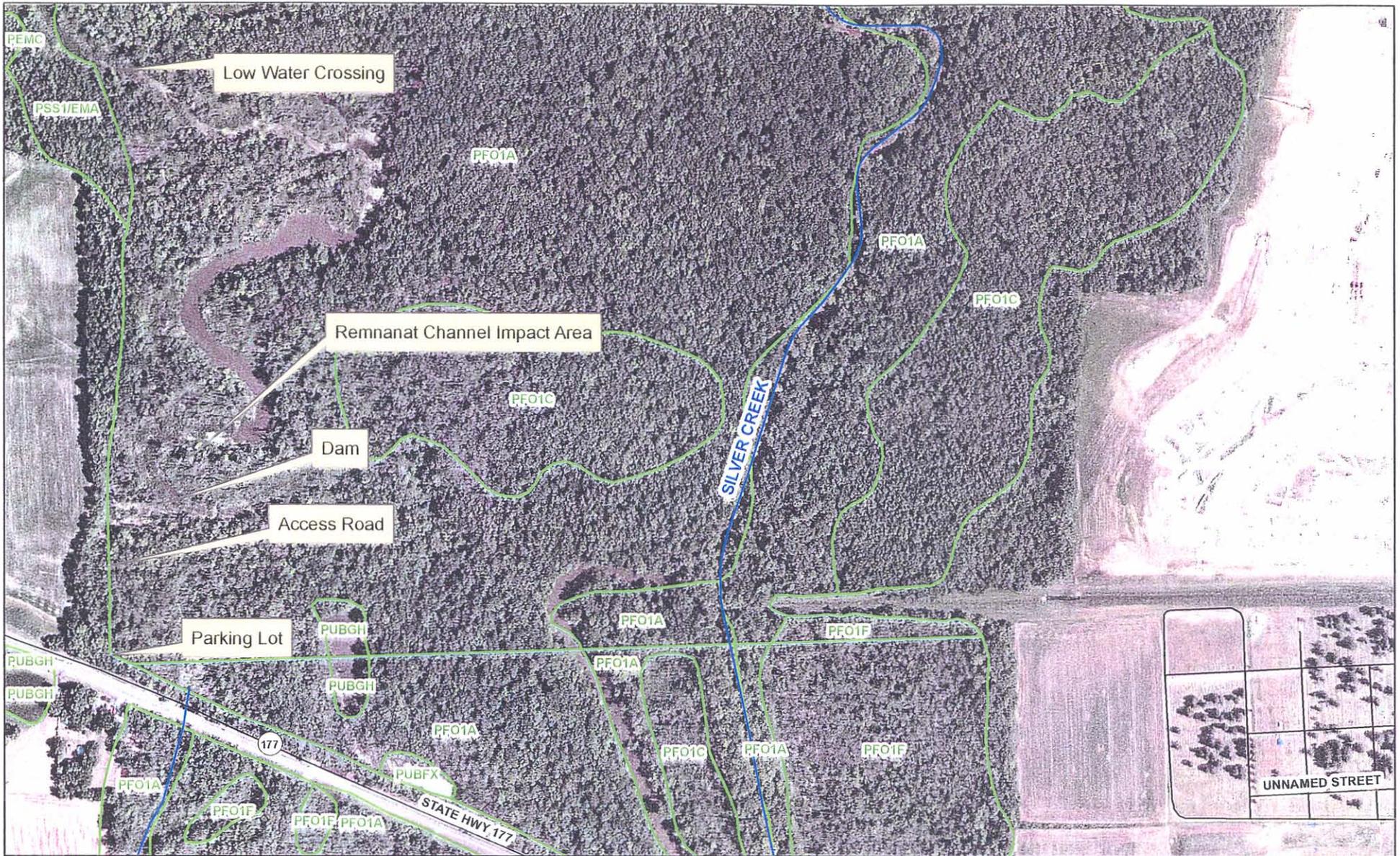


Danny D. McClendon  
Chief, Regulatory Branch

Attachments

**NOTICE TO POSTMASTERS:**

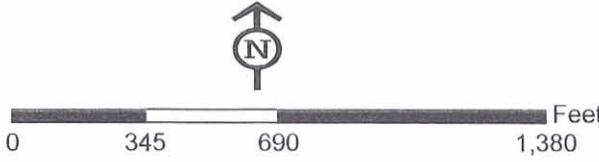
It is requested that this public notice be conspicuously and continually placed for 21 days from the date of issuance.



**Legend**

-  Stream
-  Street
-  State Hwy
-  US Hwy
-  Interstate

**P-2668**  
**Project Location Map - MVS-2007-835**  
**Mascoutah, St. Clair County, Illinois**

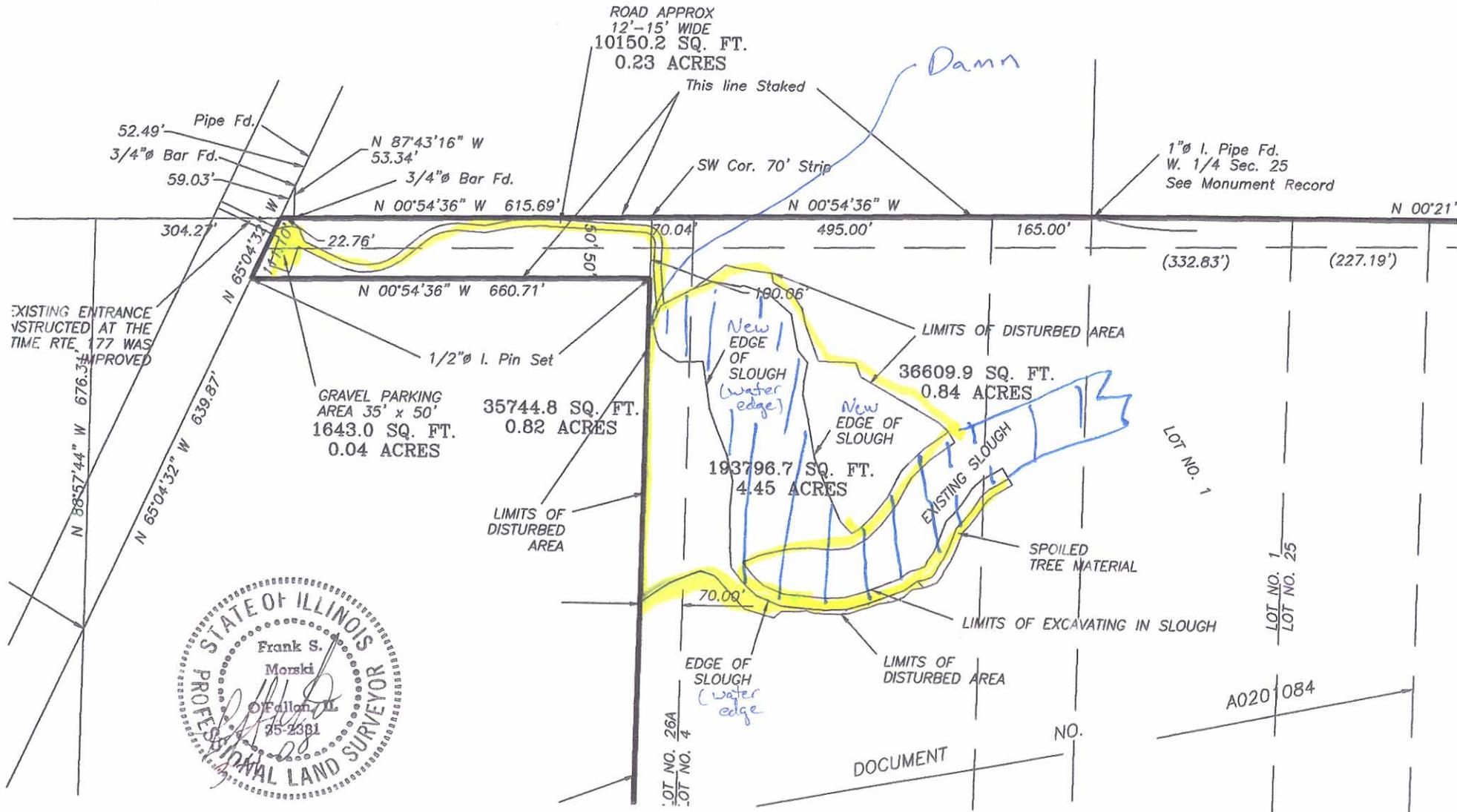


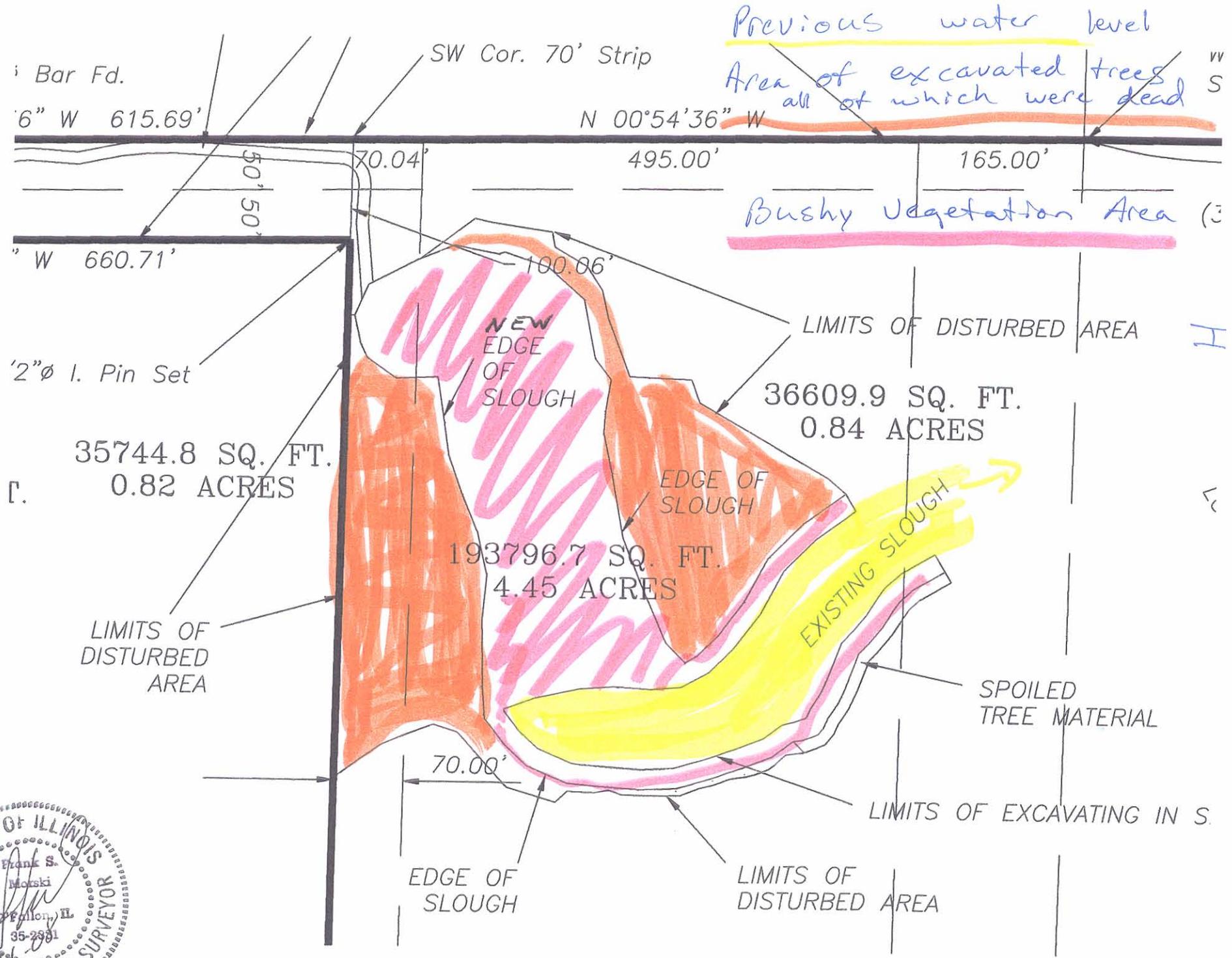

**US Army Corps of Engineers**  
 St. Louis District

# PLAT OF SURVEY

*Impacted Area*

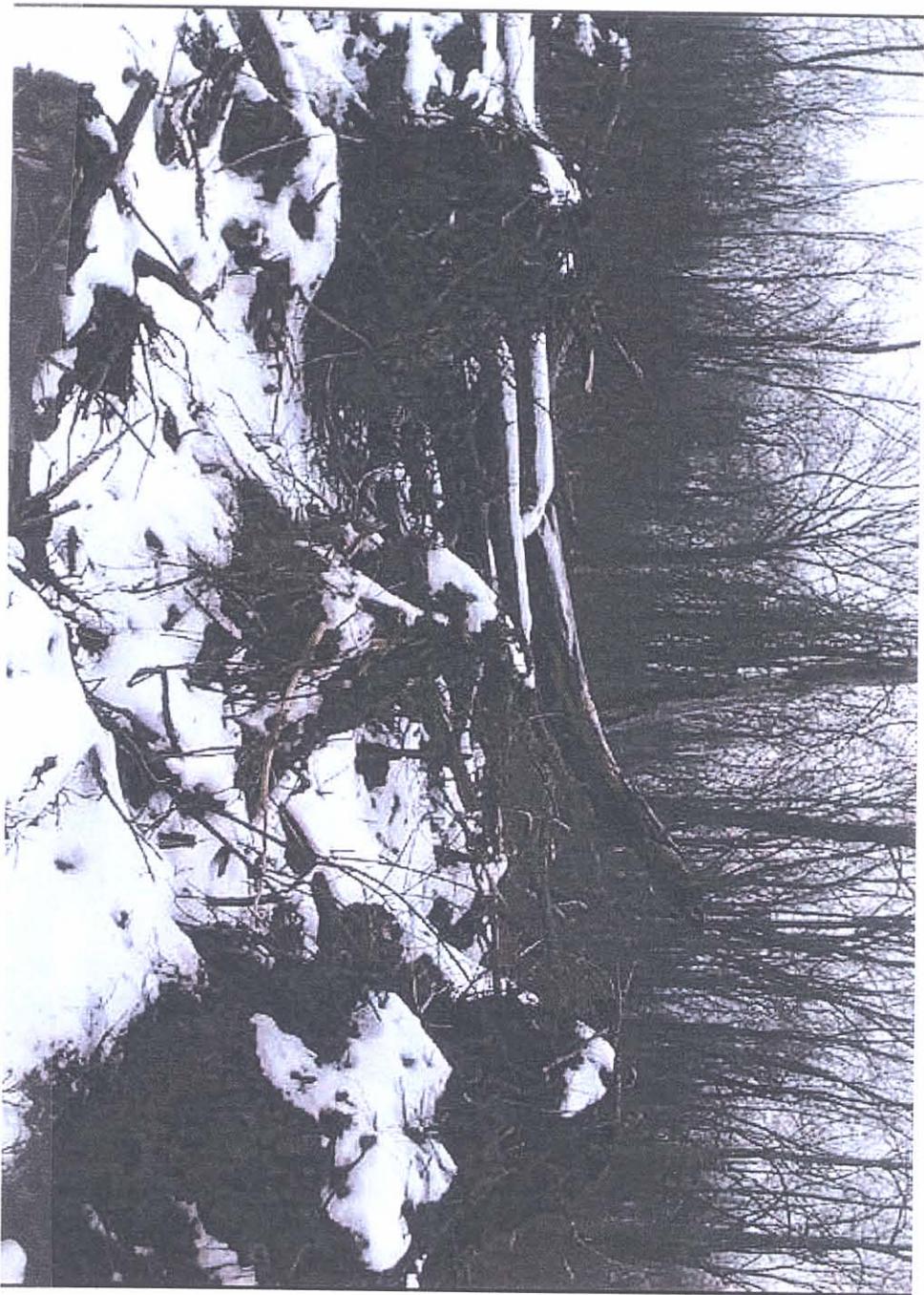
Part of the NW 1/4 and Part of the SW 1/4  
of Section 25, T. 1 N., R.6 W., 7 West of the  
3rd P.M., St. Clair County, Illinois







12/20/07





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