

## APPENDIX C

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Section 106 of the  
National Historic Preservation Act

**MEMORANDUM OF AGREEMENT  
AMONG THE  
U.S. FISH AND WILDLIFE SERVICE,  
MARLAND PLACE ASSOCIATES LIMITED PARTNERSHIP,  
THE MASSACHUSETTS HISTORICAL COMMISSION,  
AND THE  
MASSACHUSETTS BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES  
FOR THE  
MARLAND PLACE DAM REMOVAL PROJECT**

WHEREAS, Marland Place Associates Limited Partnership, a Massachusetts limited partnership (MP), the project proponent, is proposing the Marland Place Dam Removal Project in Andover, Massachusetts, consisting of removal of the dam, installation of a grade control riffle, accumulated sediment excavation, and reconstruction of the floodplain to restore riverine habitat and a free-flowing riverine system for migratory and resident fish passage ("the undertaking" or the "Project") as shown on the plan attached as Exhibit 1; and

WHEREAS, the U. S. Fish and Wildlife Service (USFWS), as lead Federal agency for the Project, has determined that the undertaking will have an adverse effect on the Marland Woolen Mills Dam (ANV.924) identified as a component of the Marland Woolen Mills complex (ANV.545), which is a contributing resource to the National Register of Historic Places (NRHP)-listed Andover Village Industrial District (ANV.C); and

WHEREAS, the undertaking will be accomplished using Federal funds from the Disaster Relief Appropriations Act of 2013 through the Department of the Interior; and

WHEREAS, the USFWS has consulted with the Massachusetts Historical Commission (MHC) pursuant to applicable regulations found in 36 CFR Part 800 implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f) and has provided documentation required by 36 CFR § 800.11 to them; and

WHEREAS, the USFWS has invited the Advisory Council on Historic Preservation (ACHP) to participate in the consultation process, and the ACHP has determined that its participation in the consultation to resolve adverse effects is not necessary; and

WHEREAS, the USFWS has solicited input from Tribal interests (Wampanoag Tribe of Gay Head and Mashpee Wampanoag Indian Tribal Council) to participate in this section 106 consultation process, but received no responses; and

WHEREAS, the USFWS has consulted with the Massachusetts Board of Underwater Archaeological Resources (BUAR) and invited the BUAR to be a signatory of this Memorandum of Agreement (MOA) and BUAR has accepted; and

WHEREAS, the USFWS has coordinated with and solicited input from the local and regional community interested in historic resources to participate in this section 106 consultation process; and

WHEREAS, the Andover Preservation Commission has commented on the undertaking, and been invited by the USFWS to sign this MOA as a concurring party, but chosen not to sign; and

WHEREAS, the Andover Historical Society has commented on the undertaking, and has been invited by the USFWS to sign this MOA as a concurring party, but received no response; and

NOW THEREFORE, the USFWS, the MHC, the BUAR, and MP agree that the project undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

### **Stipulations**

The USFWS shall ensure that the following measures are implemented:

- I. Documentation
  - A. The USFWS and MP, with the assistance of a 36 CFR 61 qualified architectural/industrial historian, will provide detailed mapping and photographic documentation of the dam and associated hydropower infrastructure, including the low-level gate, raceway gate, and turbine. Documentation will occur prior to construction, during removal of the dam, and after drawdown of the impoundment. All details will be documented in MHC Form F – Structure Form, along with a written description and historical narrative of the Marland Place Dam and industrial district. The specific content of the State-level documentation will be determined in consultation with the MHC.
  - B. The USFWS and MP, with the assistance of a 36 CFR 61 qualified architectural/industrial historian, will complete a National Register Criteria Statement Form for the Marland Place Dam.
  - C. All documentation will be submitted to and reviewed and approved by the MHC. If comments are not received within 30 days of submission, it will be assumed that the documentation is complete and acceptable.
  - D. An original of the documentation will be provided to the Commonwealth of Massachusetts for the MHC files. Copies of this documentation will be made available by the USFWS to appropriate local archives such as the Andover Preservation Commission, Andover Historical Society, and Andover Town Library, or as designated by the USFWS in consultation with the MHC.

## II. Interpretation

- A. The USFWS and MP, with the assistance of a 36 CFR 61 qualified architectural historian, and in consultation with the MHC, Andover Historical Society, and Andover Preservation Commission, will prepare interpretive materials that disseminate information about the Marland Place Dam and the Andover Village Industrial District to the interested public. Draft interpretive text and plan and specifications showing the proposed design and location of a brass plaque or marker shall be submitted to the signatories and invited signatories for review and comment. The final interpretive text and plan shall take into account signatory and invited signatory comments on the draft text, design, and plan. The deadline for completing the interpretive materials shall be two (2) years from the date of execution of this MOA. This deadline may be extended if mutually agreeable between the USFWS and the MHC.

## III. Dewatered Impoundment Archaeological Investigations

- A. An archaeological reconnaissance survey (950 CMR 70) and program of archaeological monitoring shall be conducted by a qualified archaeological consultant under archaeological field investigation permits issued by the Massachusetts State Archaeologist (950 CMR 70) and the Massachusetts Board of Underwater Archaeological Resources (312 CMR 2) for the dewatered impoundment prior to dam removal, and during removal of the deposited silt layer conducted in accordance with the dam removal and river restoration plans. The results of the archaeological reconnaissance survey and program of archaeological monitoring shall be submitted to the signatories and invited signatories for review and comment as the project proceeds. If potentially significant historic or archaeological resources are identified within the dewatered impoundment, then a plan to avoid or mitigate adverse effects to the significant historic or archaeological resources shall be developed in consultation with and implemented by the relevant signatories and invited signatories.

## IV. Post-Review Discoveries

- A. The USFWS and MP or their project consultants shall notify MHC and appropriate invited signatories and/or interested parties if previously unidentified historic properties, including archaeological resources, are discovered during construction activities. Consultation among the signatories and invited signatories shall proceed pursuant to 36 CFR 800.13 and the USFWS and MHC shall apply the National Register criteria of eligibility (36 CFR 60). Signatories and appropriate invited signatories and/or interested parties shall develop and implement a plan to identify and evaluate, including protecting the discovery location, and to avoid, minimize, or mitigate any adverse effects to the historic or archaeological resource(s), consistent with applicable State and/or Federal regulations and the Massachusetts Board of Underwater Archaeological

Resources Policy Guidance for the Discovery of Unanticipated Archaeological Resources.

V. Dispute Resolution

- A. Should any signatory to this MOA object within thirty (30) days to any actions proposed or carried out pursuant to this MOA, the USFWS shall consult with the MHC to resolve the objection. If the USFWS determines that the objection cannot be resolved, the USFWS shall forward all documentation relevant to the dispute to the ACHP. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will either:
1. provide the USFWS with recommendations which the USFWS will take into account in reaching a final decision regarding the dispute; or
  2. notify the USFWS that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any recommendations or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the USFWS's responsibility to carry out all actions under the MOA that are not the subject of the dispute will remain unchanged.
- B. If at any time during the implementation of the measures stipulated in this MOA an objection should be raised by an interested member of the public or consulting parties, the USFWS will consult with the other parties to this MOA to determine the appropriate response.

VI. Duration

This MOA will expire if its terms are not carried out within three (3) years from the date of its execution. Prior to such time, the USFWS may consult with the other signatories to reconsider the terms of this MOA and amend it in accordance with Section VIII below.

VII. Limitations and Assurances

This MOA is not a fiscal or fund obligating document and no funds are transferred hereunder. The USFWS will ensure that project partners gain best professional estimates for all activities proposed in this undertaking. The USFWS agrees not to proceed with the undertaking until the project partners have obtained adequate funding, based on best professional estimates, to fulfill the obligations under this MOA.

VIII. Amendments

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

IX. Termination

- A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties in an attempt to develop an amendment per the stipulation in Section VIII above. If, within thirty (30) days (or another time period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.
- B. In the event the MOA is terminated, the USFWS will either execute an MOA with signatories pursuant to 36 CFR 800.6 (c), or request a written response from the ACHP under 36 CFR 800.7 (a).

Execution of this MOA by the USFWS and the MHC, and its subsequent filing with the ACHP, and implementation of its terms evidences that the USFWS has afforded the ACHP an opportunity to comment on the Marland Place Dam Removal Project, and that USFWS has taken into account the effects of the undertaking on historic properties.

U.S. FISH AND WILDLIFE SERVICE

Acting  
for  
By: *Eric L. Derleth* Date: *7/5/2016*  
Thomas R. Chapman, Supervisor, New England Field Office

MASSACHUSETTS HISTORICAL COMMISSION

By: *Brona Simon* Date: *7/14/16*  
Brona Simon, Executive Director, State Historic Preservation Officer, State Archaeologist

MASSACHUSETTS BOARD OF UNDERWATER ARCHAEOLOGICAL RESOURCES

By: *Victor T. Mastone* Date: *07/24/2016*  
Victor T. Mastone, Director

INVITED SIGNATORY:

MARLAND PLACE ASSOCIATES LIMITED PARTNERSHIP

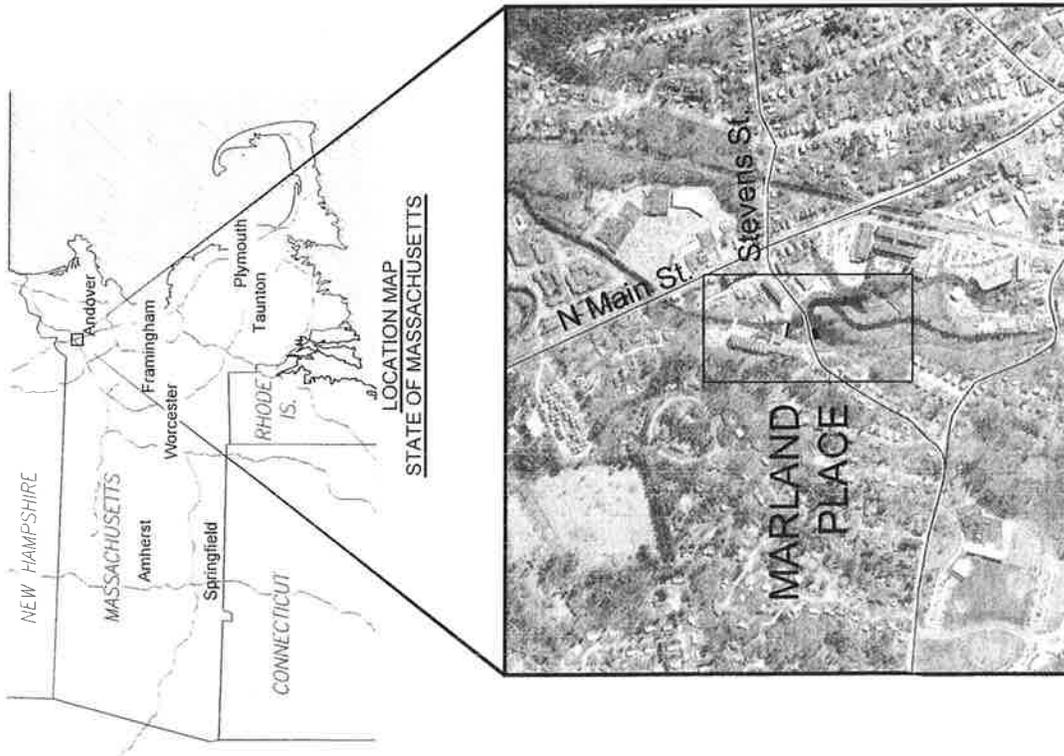
By: VTR Marland Place, LLC, a Delaware limited liability company, its general partner

By: *Christian N. Cummings* Date: *8/29/16*  
Christian N. Cummings, President

**EXHIBIT 1**

**Plan of the Undertaking**

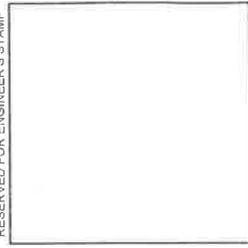
# SHAWSHEEN RIVER RESTORATION MARLAND PLACE DAM REMOVAL ANDOVER, MA 100% DRAWINGS



## SHEET INDEX

1. PROJECT LOCATION AND SHEET INDEX
2. EXISTING CONDITIONS & CONSTRUCTION STAGING PLAN
3. PROPOSED GRADING PLAN AND PROFILE
4. PROPOSED TREATMENT PLAN
5. CROSS SECTIONS
6. TYPICAL CROSS SECTIONS
7. VEGETATION PLAN
8. PERMITTING SHEET
9. PERMITTING SHEET
10. EROSION AND SEDIMENT CONTROL
11. FABRIC PLACEMENT
12. FABRIC ENCAPSULATED SOIL (FES) LIFTS

"RESERVED FOR ENGINEER'S STAMP"



SHEET  
1 of 13

Project Location  
and Sheet Index

220 Concord Ave. 3rd Floor  
Concord, MA 02150  
617.774.0327  
www.interfluv.com

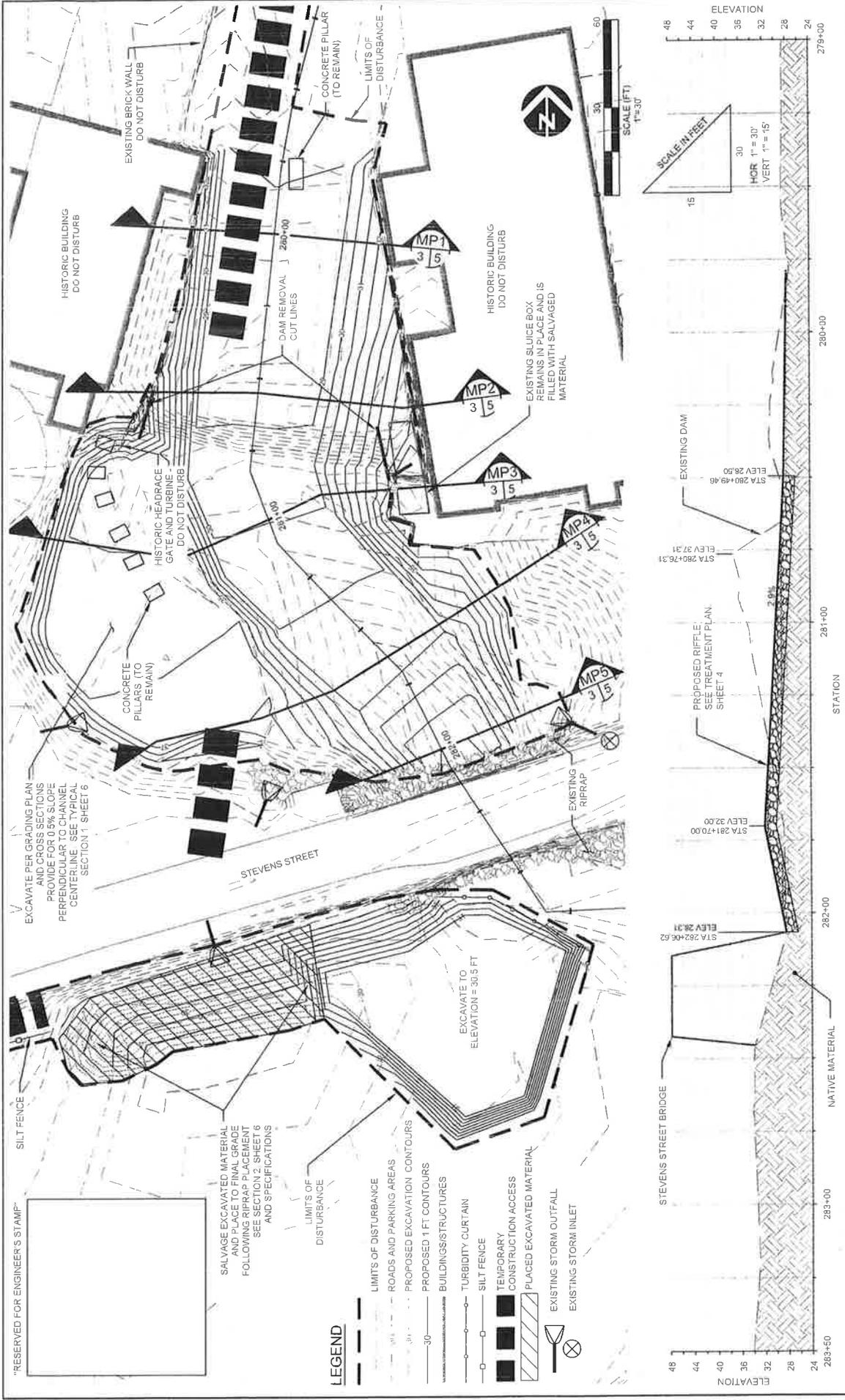


Shawsheen River  
Marland Place Dam Removal  
Andover, MA

SITE MAP

SUB/DRP	BL/NN	BN	BN
DRAWN	DESIGNED	CHECKED	PROJECT
APPROVED	DATE	DATE	DATE
	11.1.15	15-05-04	





**"RESERVED FOR ENGINEER'S STAMP"**

**inter-fluve**

220 Concord Ave. 2nd Floor  
Concord, MA 03301  
www.inter-fluve.com

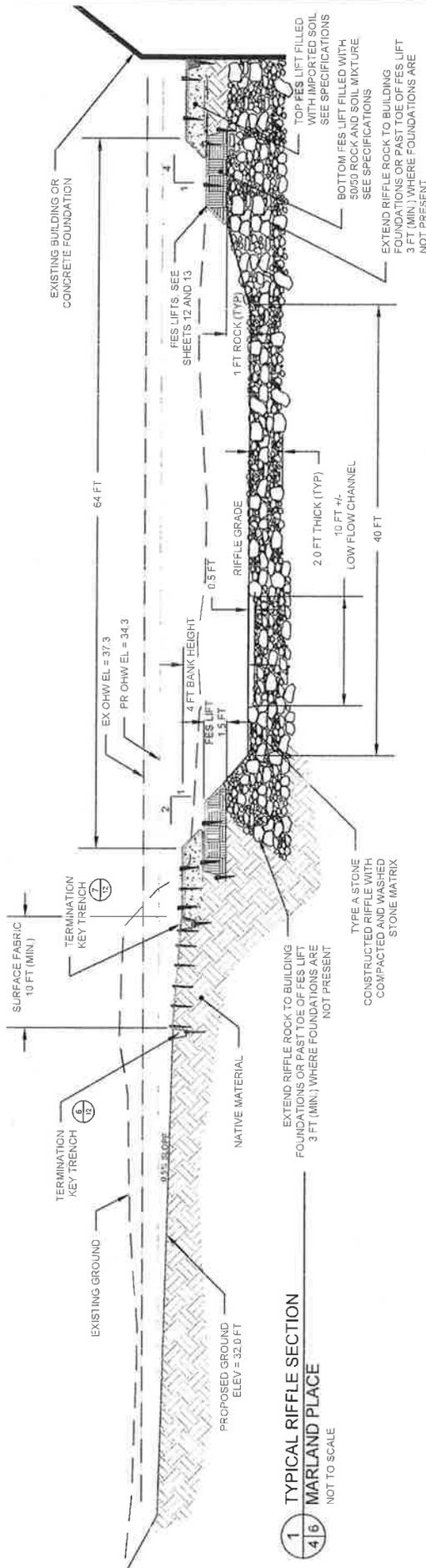
**Shawshen River  
Marland Place Dam Removal  
Andover, MA**

**Proposed Grading Plan and Profile**

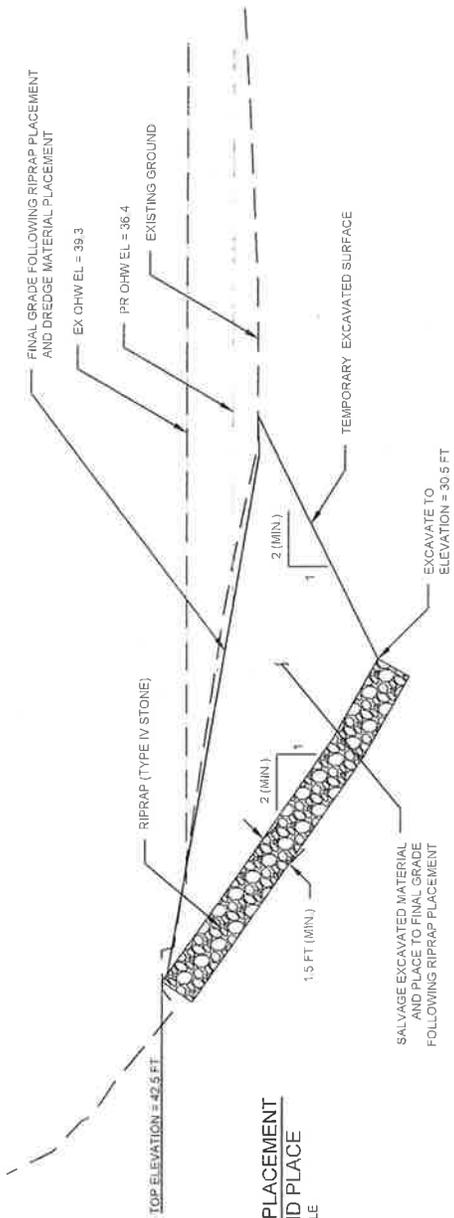
**3 of 13**

NO.	DATE	REVISION/DESCRIPTION

SUBDRP	BL/NN	BN
DRAWN	DESIGNED	CHECKED
11-11-15	15-05-04	15-05-04
APPROVED	DATE	PROJECT



**1**  
**4/6** TYPICAL RIFFLE SECTION  
MARLAND PLACE  
NOT TO SCALE



**2**  
**4/6** RIRRAP PLACEMENT  
MARLAND PLACE  
NOT TO SCALE

"RESERVED FOR ENGINEER'S STAMP"

SUBDRP	BLN	BN
DRAWN	DESIGNED	CHECKED
BN	11-11-15	15-05-04
APPROVED	DATE	PROJECT

NO.	DATE	REVISION/DESCRIPTION