

Subj: **FW: Legend Oaks_2009-00106_clarification**
Date: 5/29/2009 4:44:27 P.M. Eastern Daylight Time
From: jburdetteblc@bellsouth.net
To: HBPowell@aol.com, trent@arcadiaengineers.com

For your use and reference.

Jennifer Burdette
Burdette Land Consulting Inc
10212 Creedmoor Road
Raleigh NC 27615

(919) 841-9977 office
(919) 422-3605 mobile
(919) 841-9909 fax

From: Matthews, Monte K SAW [mailto:Monte.K.Matthews@saw02.usace.army.mil]
Sent: Friday, May 29, 2009 3:47 PM
To: Jennifer Burdette
Cc: Matthews, Monte K SAW
Subject: Legend Oaks_2009-00106_clarification

Jennifer,

Please allow this email to correct an error in the cover letter which accompanied the recently issued Individual Permit (Action ID 2009-00106) for Legend Oaks Phase III subdivision near Chapel Hill, in Chatham County, North Carolina. The cover letter identified this permit as an After-the-Fact permit, indicating that impacts to jurisdictional waters occurred prior to the issuance of the permit. As we both know, this is not an accurate representation of the permitting sequence for this project because impacts have not occurred and this was never considered an After-the-Fact permit. I apologize for this mistake and want everyone involved with this process to realize the mistake was mine.

I'll place this email in the official Legend Oaks file within our office to clarify the standings of this project and suggest you keep a copy for your records as well. If you, or Mr. Powell feel that a signed letter is needed to correct this situation to your satisfaction, just let me know.

Thanks for the good work on this project.

Monte Matthews
Project Manager
US Army Corps of Engineers, Wilmington District



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

May 21, 2009

Regulatory Division

Action ID SAW-2009-00106

Mr. H. Brantley Powell
HBP Properties, LLC
Post Office Box 5365
Cary, North Carolina 27512

Dear Mr. Powell:

Enclosed is a Department of the Army After-the-Fact permit to authorize the permanent placement of fill material into 376 linear feet of perennial streams and 0.006 acre of wetlands, and temporarily impact 38 linear feet of stream channel associated with the construction of the Legend Oaks, Phase III Subdivision. The project is located at the end of the existing phase of the subdivision, north of Lystra Road and east of US Highway 15/501 near Chapel Hill, in Chatham County, North Carolina.

Any deviation in the authorized work will likely require modification of this permit. If a change in the authorized work is necessary, you should promptly submit revised plans to the Corps showing the proposed changes. You may not undertake the proposed changes until the Corps notifies you that your permit has been modified.

Carefully read your permit. The general and special conditions are important. Your failure to comply with these conditions could result in a violation of Federal law. Certain significant conditions require that:

- a. You must complete construction before May 4, 2014.
- b. You must allow representatives from this office to make periodic visits to your worksite as deemed necessary to assure compliance with permit plans and conditions.

You must notify this office in advance as to when you intend to commence and complete work.

You should address all questions regarding this authorization to Monte Matthews, Raleigh Regulatory Field Office at (919) 554-4884, extension 30.

Sincerely,



for Jefferson M. Ryscavage
Colonel, U.S. Army
District Commander

Enclosures

Copy Furnished (with enclosures):

~~Chief~~, Source Data Unit
NOAA/National Ocean Service
ATTN: Sharon Tear N/CS261
1315 East-West Hwy., Rm 7316
Silver Spring, Maryland 20910-3282

Copy Furnished (with special conditions and plans):

Mr. Ronald J. Mikulak, Chief
Wetlands Regulatory Section
61 Forsyth Street
Atlanta, Georgia 30303

Mr. Pete Benjamin
U.S. Fish and Wildlife Service
Fish and Wildlife Enhancement
Post Office Box 33726
Raleigh, North Carolina 27636-3726

Mr. Ron Sechler
National Marine Fisheries Service
Pivers Island
Beaufort, North Carolina 28516

Mr. Doug Huggett
Division of Coastal Management
N.C. Department of Environment
and Natural Resources
400 Commerce Avenue
Morehead City, North Carolina 28557

Mr. David Rackley
National Marine Fisheries Service
219 Fort Johnson Road
Charleston, South Carolina 29412-9110

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mr. H. Brantley Powell - HBP Properties, LLC

Permit No: SAW-200900106

Issuing Office: USAED, WILMINGTON

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 the office acting under the authority of the commanding officer.

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

Project Description: The activity involved the expansion of a residential subdivision including all roadways, utility lines, stormwater features, and amenities. Impacts from the initial phases of Legend Oaks were originally verified under Nationwide Permit by the Corps via Action ID number 200620111. To accommodate Phase III of Legend Oaks, the applicant has requested DA authorization for permanent impacts to 376 linear feet of perennial streams and 0.006 acre of wetlands, and temporary impacts to 38 linear feet of stream. These impacts are for the installation of 3 culverted road crossings on internal subdivision roads needed to access upland areas of the project proposed for development. All impacts were assessed at a 2:1 mitigation ratio by the Corps.

Mitigation via payment to the North Carolina Ecosystem Enhancement Program (NCEEP) was proposed at a 1:1 ratio to offset unavoidable impacts to jurisdictional waters. This payment was to be in an amount necessary to restore 376 linear feet of warm water stream in the Cape Fear River Basin (Cataloging Unit 03030003). In a letter dated February 26, 2009, the NCEEP stated they would be willing to accept payment for the impacts associated with this project. In addition, on-site preservation is proposed to offset the remaining impacts in the amount of 1,820 linear feet of stream channel resulting in a 5:1 preservation ratio. This project is "grandfathered" within the previous Chatham County buffer regulations; however, the applicant has tightened the restrictions and expanded the buffer widths to generate additional environmental protection required for the preservation component of the mitigation plan.

Project Location: The project, known as Legend Oaks Phase III, is located within the existing Legend Oaks subdivision, north of Lystra Road and east of US Highway 15/501, near Chapel Hill, in Chatham County, North Carolina (Lat. 35.8422N, Long. -79.0721W). The site contains Cub Creek, 3 of its unnamed tributaries and their adjacent wetlands, which are in the Cape Fear River Basin (Hydrologic Unit Code 03030003).

Permit Conditions:

General Conditions:

1. The time Limit for completing the work authorized ends on December 31, 2019. 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 Conditions 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 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.

Special Conditions:

*SEE ATTACHED SPECIAL CONDITIONS

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).
 - (X) 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 measure 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.


(PERMITTEE) MR. H. BRANTLEY POWELL
HBP, PROPERTIES, LLC

5/19/09
(DATE)

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


(DISTRICT Engineer) JEFFERSON M. RYSCAVAGE,
for COLONEL

5.21.2009
(DATE)

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.

(Transferee)

(Date)

**Special Conditions, Mr. H. Brantley Powell, HBP Properties, LLC, Action ID
200900106**

I. Work Limits

- a) All work authorized by this permit must be performed in strict compliance with the attached plans, which are a part of this permit. Any modification to these plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation.
- b) Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within waters or wetlands. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.
- c) Except as specified in the plans attached to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, in such a manner as to impair normal flows and circulation patterns within waters or wetlands or to reduce the reach of waters or wetlands.
- d) The North Carolina Division of Water Quality (DWQ) permit/certification number 3787 was issued for this project on March 31, 2009. Special conditions were issued associated with this water quality permit/certification and a copy of these conditions is attached as Exhibit A. These referenced conditions are hereby incorporated as special conditions of this permit.
- e) The permittee shall make payment to the North Carolina Ecosystem Enhancement Program (NC EEP) in the amount determined by the NC EEP, sufficient to perform the restoration of 376 linear feet of warm water stream in the Cape Fear River Basin, Cataloging Unit 03020201.

Construction within jurisdictional areas on the property shall begin only after the permittee has made full payment to the NC EEP and provided a copy of the payment documentation to the Corps, and the NC EEP has provided written confirmation to the Corps that it agrees to accept responsibility for the mitigation work required, in compliance with the MOU between the North Carolina Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District, dated November 4, 1998.

**Special Conditions, Mr. H. Brantley Powell, HBP Properties, LLC, Action ID
200900106**

****Note:** Habitat type may be described as found in Schafale and Weakley, Classification of the Natural Communities of North Carolina. Third Approximation, 1990; or in accordance with Cowardin, et al (1979). Classification of Wetlands and Deepwater Habitats of the of the United States.

In addition, the email (from Jennifer Burdette, Burdette Land Consulting, authorized agent) dated April 20, 2009, concerning the necessary language for the restrictive covenants governing the preservation area as required as mitigation for the proposed impacts. We (the Corps of Engineers) agree with the language within the April 20, 2009, email and require the following permit condition (pertaining to the restrictive covenants):

- Permittee shall execute and cause to be recorded in the Chatham County Register of Deeds restrictive covenants as described in your email (from Jennifer Burdette, Burdette Land Consulting, authorized agent) dated April 20, 2009, for the purpose of maintaining the restrictive covenants, as shown on the recorded plat (properly recorded and showing preservation areas), in their natural state in perpetuity, prior to the sale or conveyance of any lots or other property within Legend Oaks Phase III or by December 31, 2010, whichever comes first. The permittee shall enforce the terms of the restrictive covenants and, prior to conveyance of the property, shall take no action on the property described in the covenants inconsistent with the terms thereof. The permittee shall provide a copy of the recorded restrictive covenants to the Corps of Engineers within 30 days of recording.

II. Related Laws

- f) All mechanized equipment will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the N.C. Division of Water Quality at (919) 733-5083, Ext. 526 or (800) 662-7956 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act will be followed.

III. Project Maintenance

- g) The permittee shall advise the Corps in writing prior to beginning the work authorized by this permit and again upon completion of the work authorized by this permit. In addition, a pre-construction meeting shall take place prior to beginning the construction activities. This meeting shall be comprised of the applicant, the contractors, any sub-contractors and their equipment operators working within jurisdictional areas. Please contact the Corps of Engineers Project Manager at least 2 weeks prior to the commencement of construction to schedule this meeting.
- h) Unless otherwise authorized by this permit, all fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.
- i) The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, shall be available at the project site during construction and maintenance of this project.
- j) The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).
- k) For the installation of the culverts at the stream crossings, the pipe inverts will be buried at least one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or smaller, culverts shall be buried or placed on the stream bed as practicable and appropriate to maintain aquatic passage, and every effort shall be made to maintain the existing channel slope. The bottom of the culvert

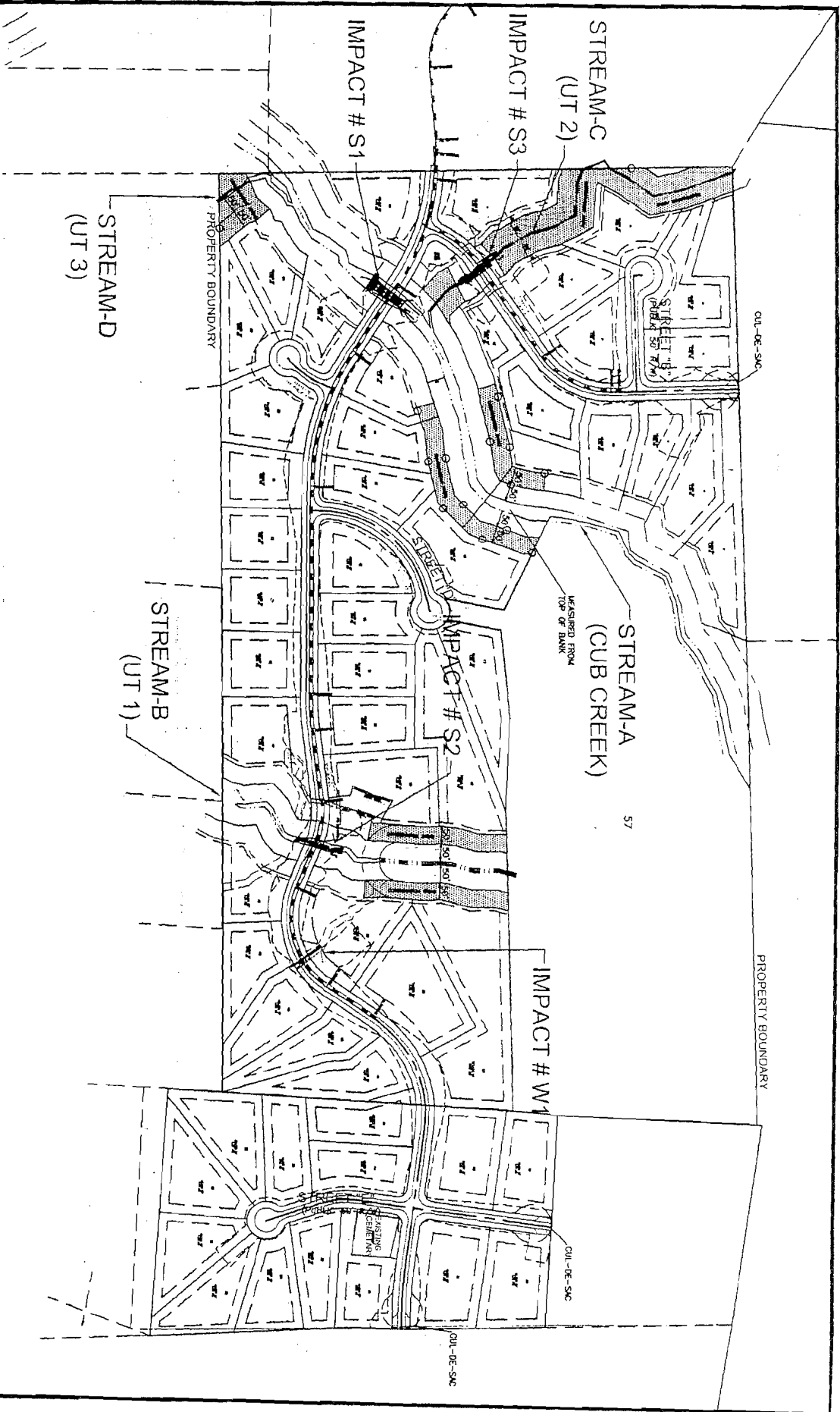
**Special Conditions, Mr. H. Brantley Powell, HBP Properties, LLC, Action ID
200900106**

must be placed at a depth below the natural stream bottom to provide for passage during drought or low flow conditions. A waiver from the depth specifications in this condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this condition would result in more adverse impacts to the aquatic environment. Culverts placed in wetlands do not have to be buried.

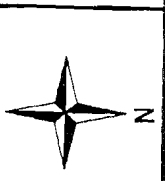
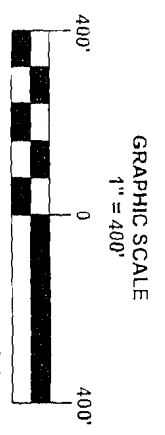
- l) The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the water or wetland to its pre-project condition.

IV. Enforcement

- m) Violations of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to the Wilmington District U.S. Army Corps of Engineers within 24 hours of the permittee's discovery of the violation.



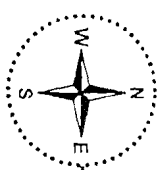
SURFACE WATER & WETLAND IMPACT MAP
 LEGEND OAKS SUBDIVISION PHASE III
 HPB PROPERTIES, LLC
 CHAPEL HILL, CHATHAM COUNTY, NC

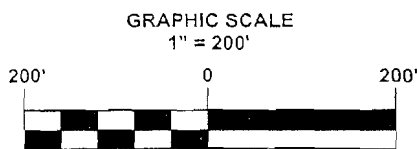
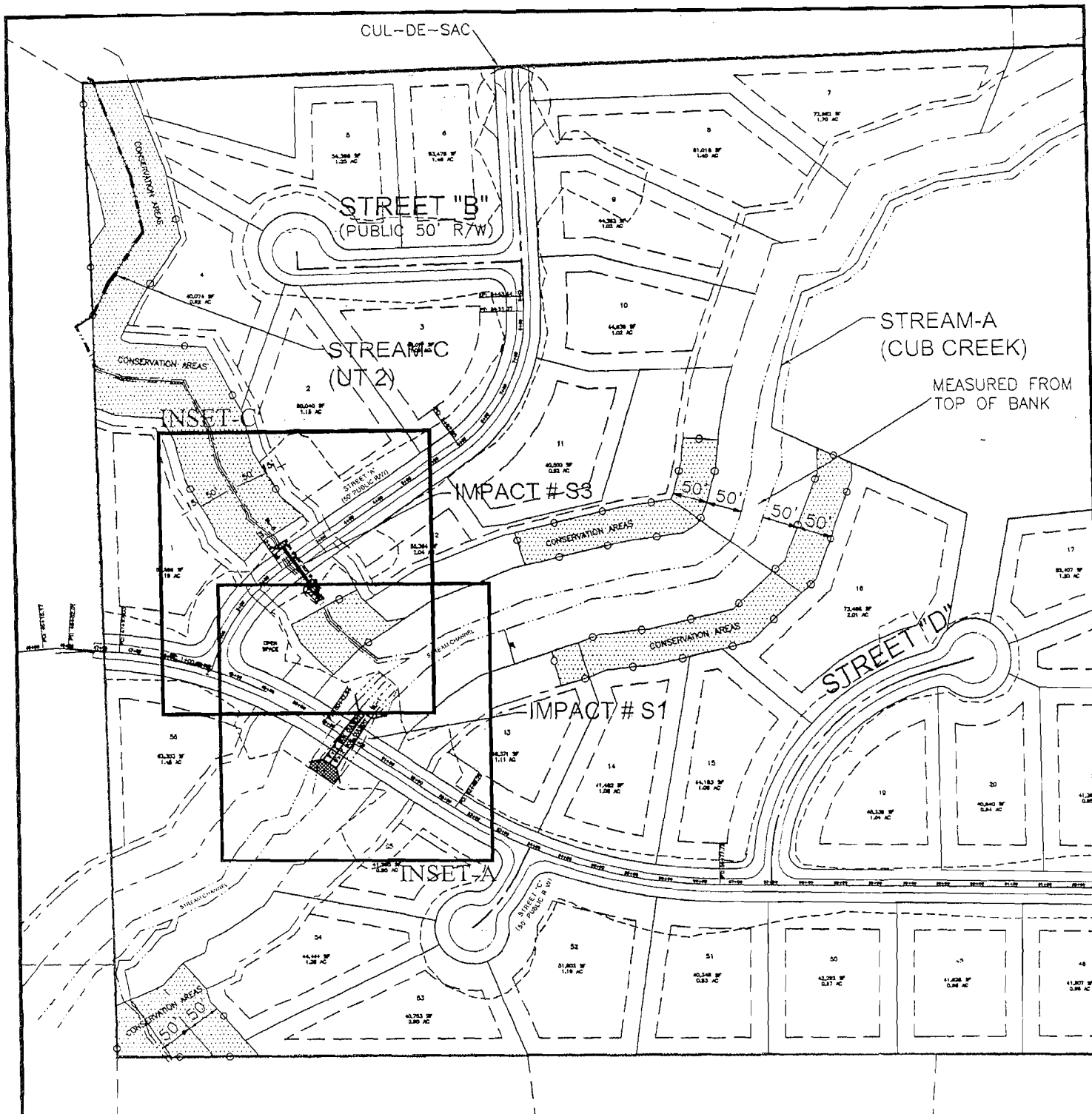


BURDETTE LAND CONSULTING, INC.

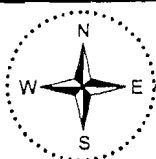
10212 Creedmoor Road - Raleigh, North Carolina 27615
 Telephone (919) 841-9977 - Fax (919) 841-9909

DATE: 03/10/09	SCALE: 1" = 500'
DRAWN BY: TMB	CHK'D BY: JAB
PROJECT #: 7145	FIGURE #: 5





SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
 HPB PROPERTIES, LLC
 CHAPEL HILL, CHATHAM COUNTY, NC



BURDETTE LAND CONSULTING, INC.

10212 Creedmoor Road - Raleigh, North Carolina 27615
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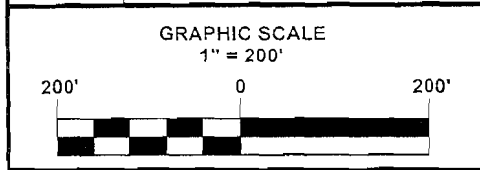
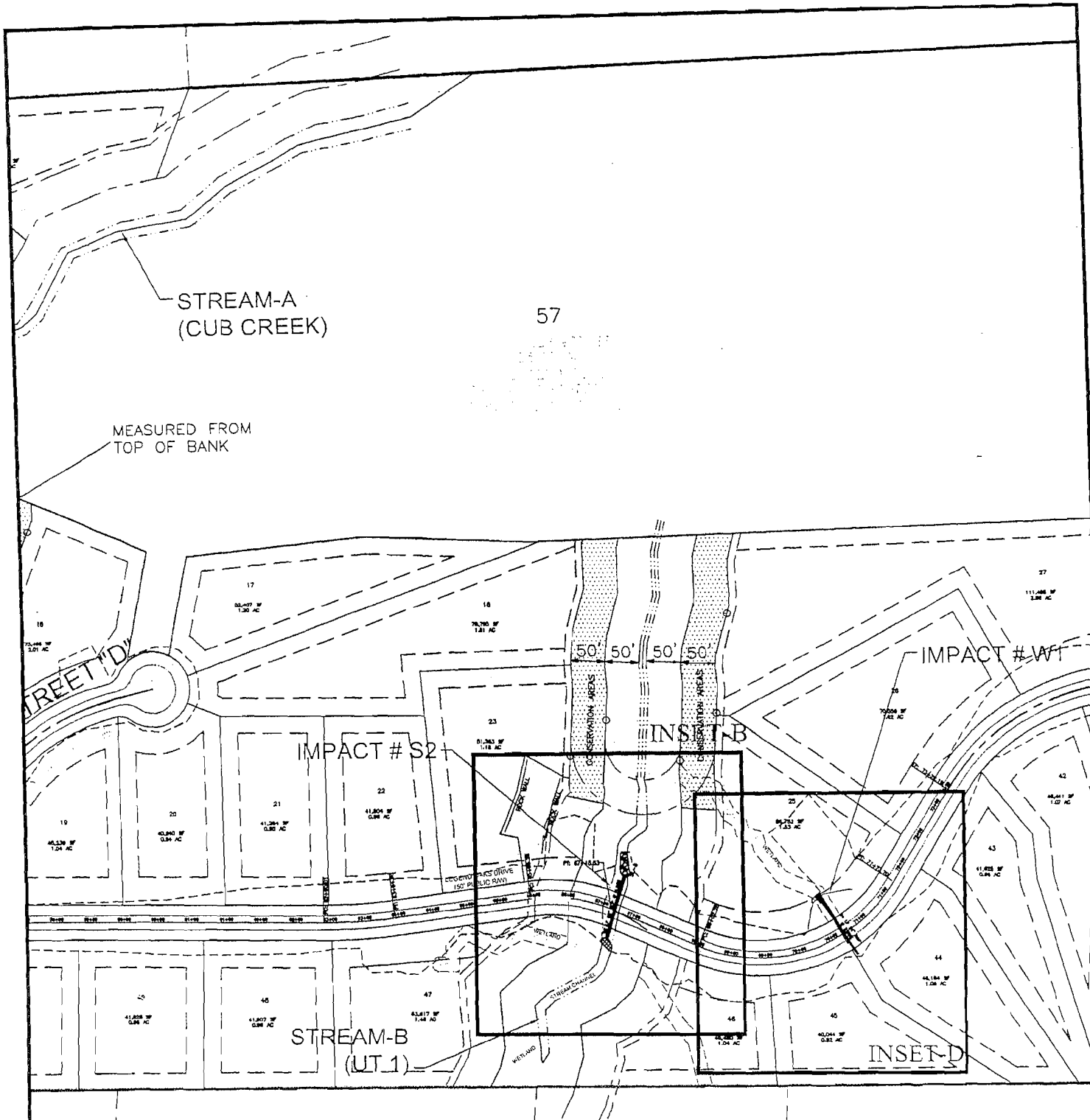
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PROJECT #: 7145

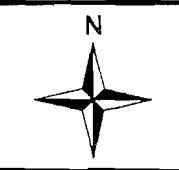
SCALE: 1" = 200'

CHK'D BY: JAB

FIGURE #: 7A



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



BURDETTE LAND CONSULTING, INC.

10212 Creedmoor Road - Raleigh, North Carolina 27615
 Telephone (919) 841-9977 - Fax (919) 841-9909

DATE: 03-10-09	SCALE: 1" = 200'
DRAWN BY: TMB	CHK'D BY: JAB
PROJECT #: 7145	FIGURE #: 7B

57

CUL-DE-S

~~STREAM-B~~
~~(UT 1)~~

IMPACT # S2-

~~IMPACT # W1~~

INSET B

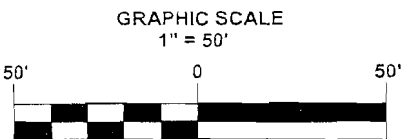
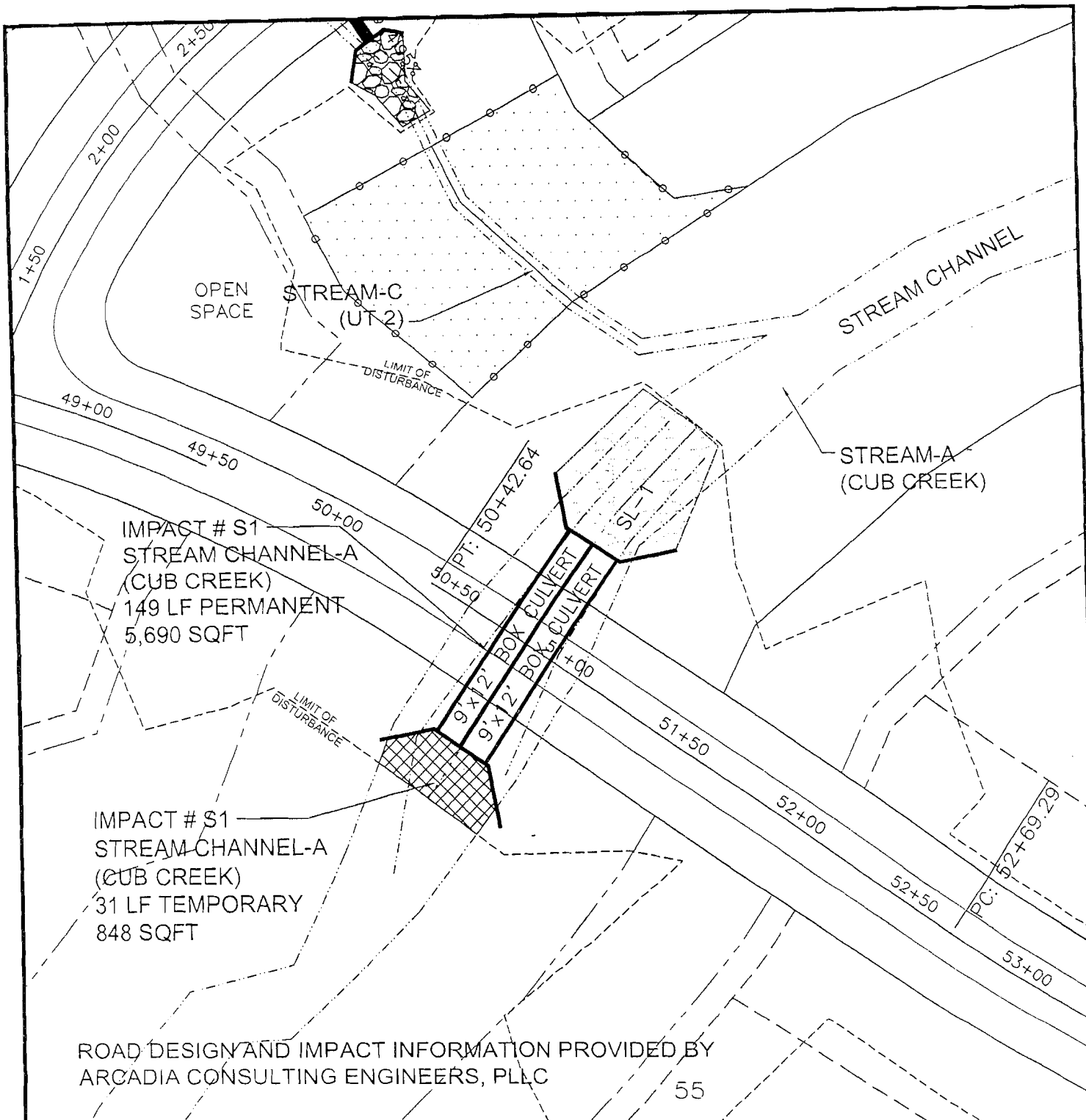
EXISTING
COUNTRY
CEMETARY

STREET "E"
CITY OF CHICAGO

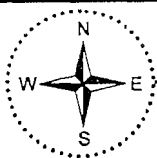


10212 Creedmoor Road - Raleigh, North Carolina 27615
Telephone (919) 841-9977 - Fax (919) 841-9909

FIGURE #: 7C



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



BURDETTE LAND CONSULTING, INC.

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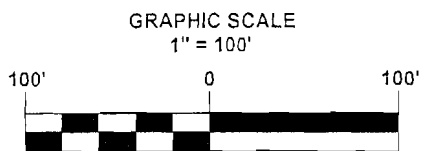
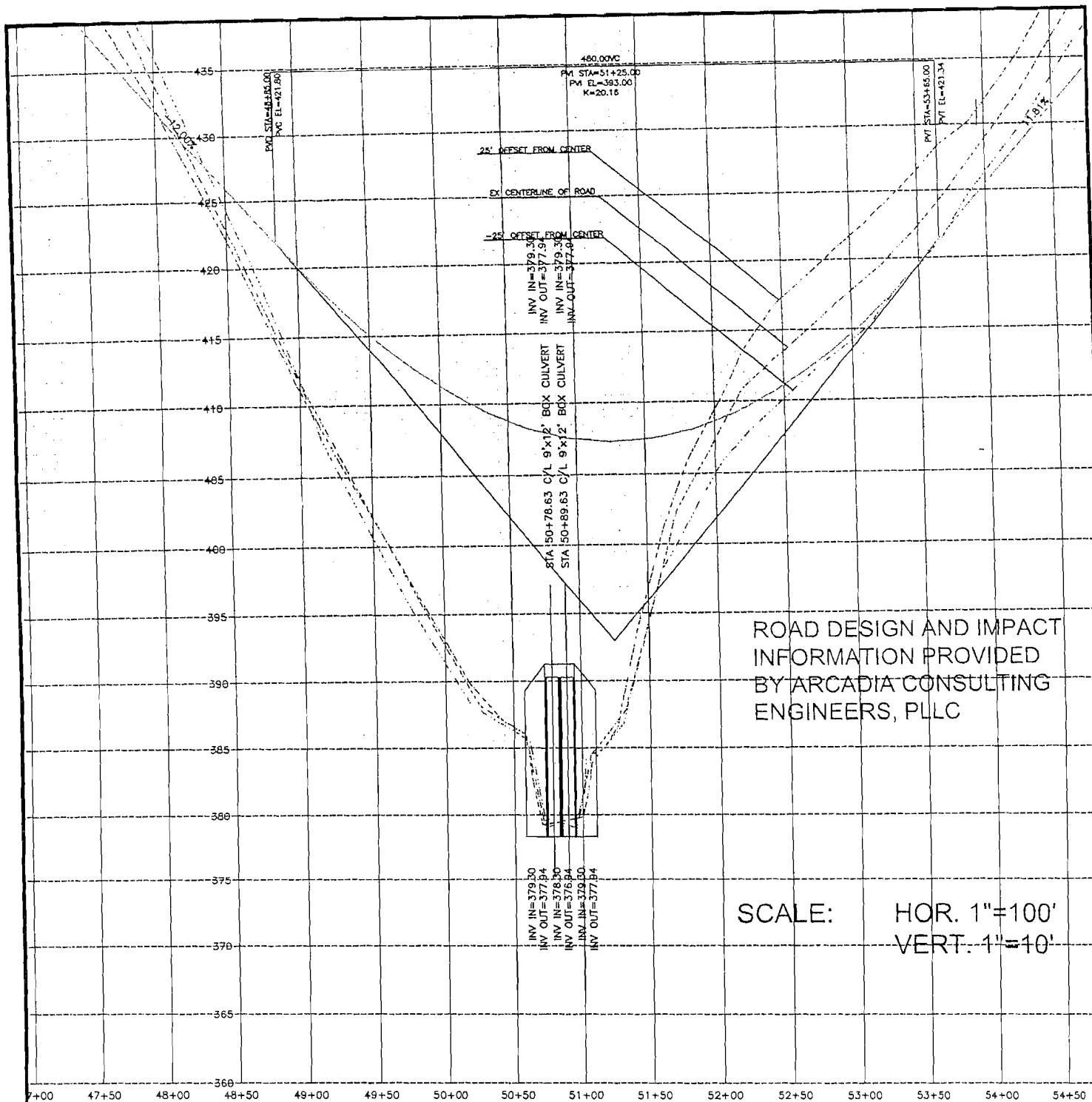
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PROJECT #: 7145

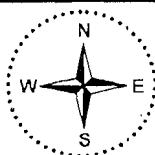
SCALE: 1" = 50'

CHK'D BY: JAB

INSET: A



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



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DATE: 03/10/09

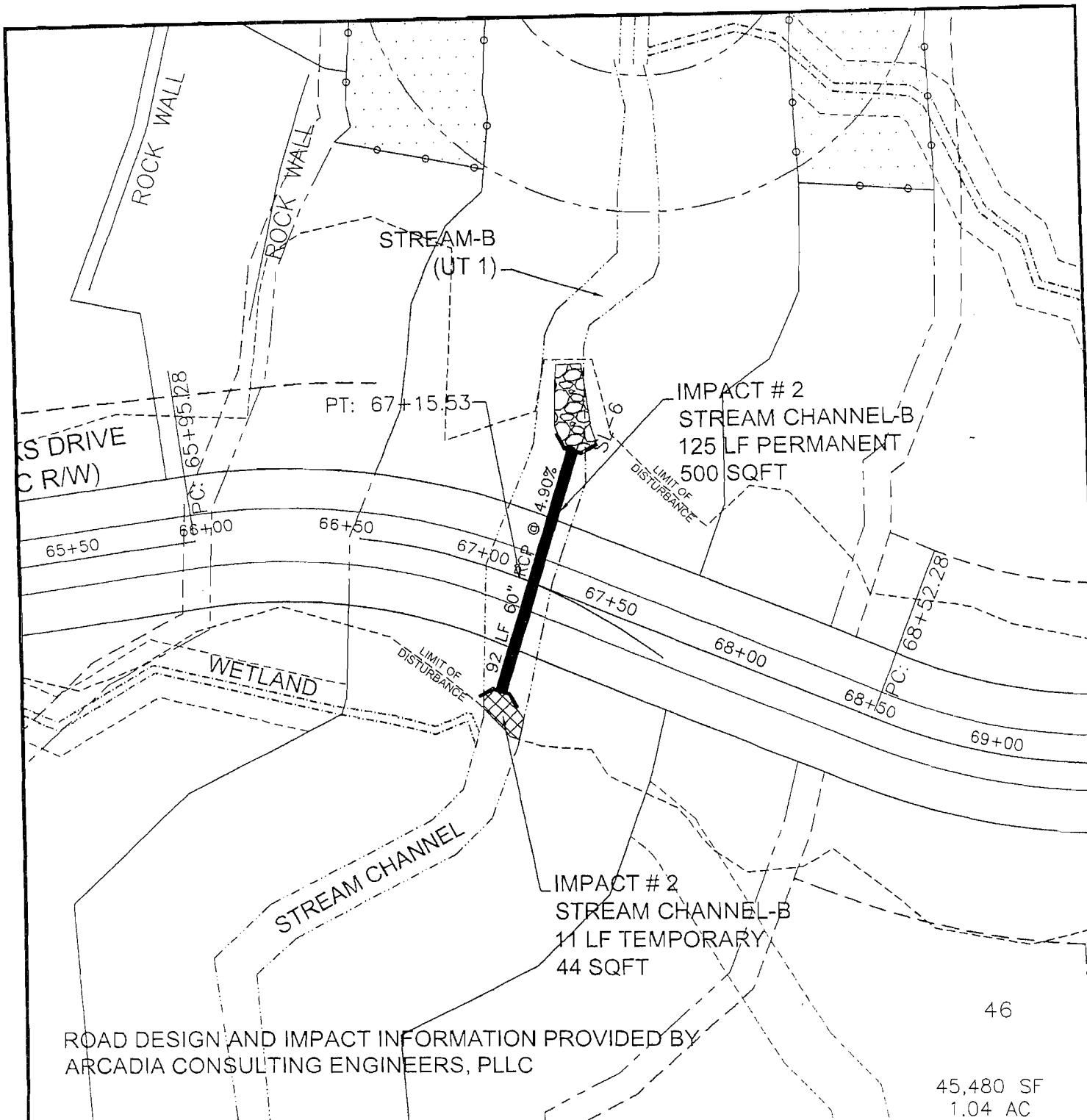
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PROJECT #: 7145

SCALE: AS SHOWN

CHK'D BY: JAB

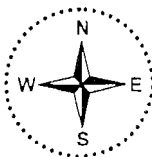
CROSSSECTION:
IMPACT # S1



GRAPHIC SCALE
1" = 50'



SURFACE WATER & WETLAND IMPACT MAP
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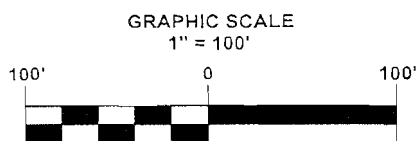
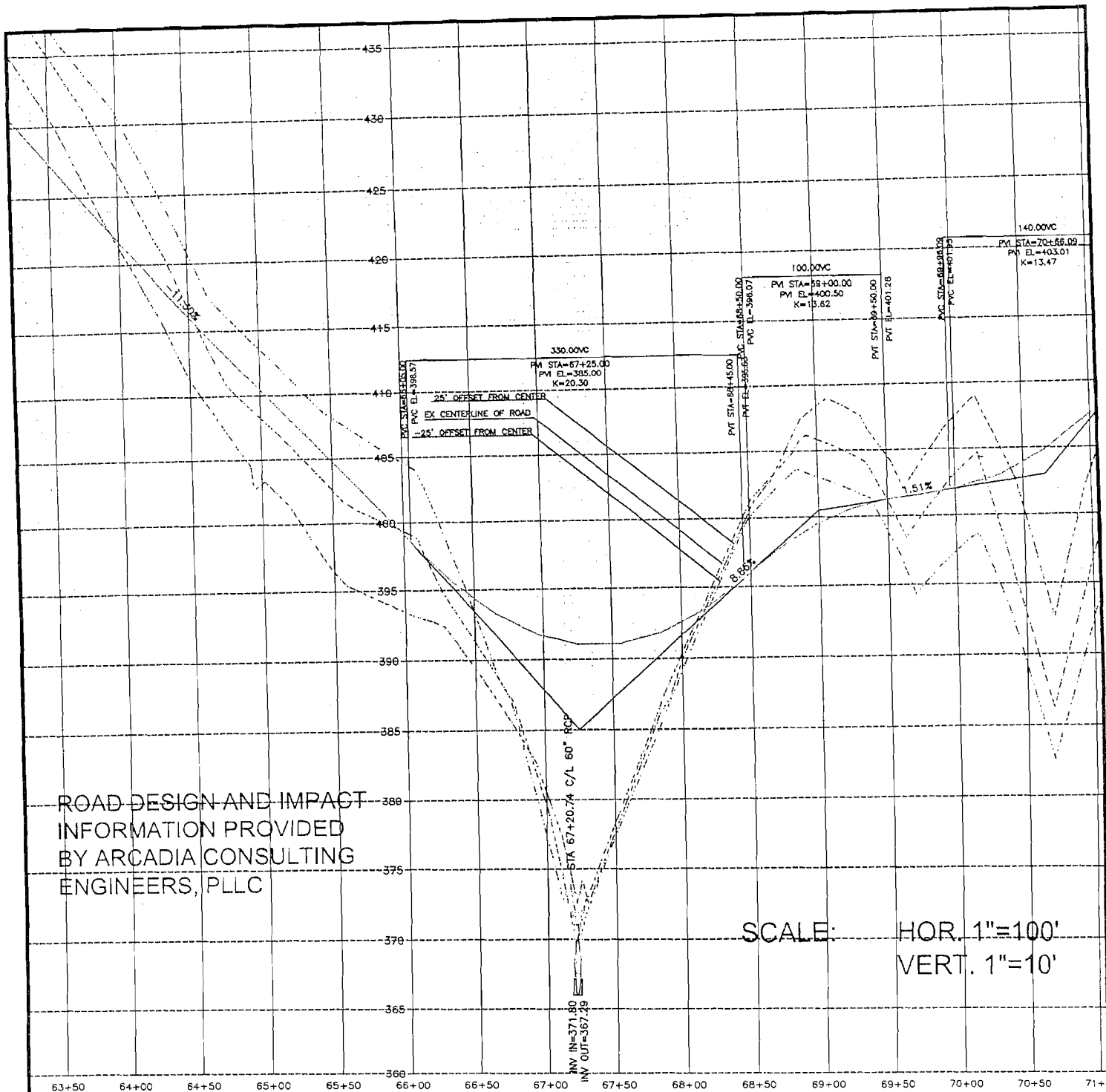
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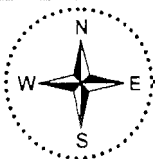
SCALE: 1" = 50'

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INSET: B



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



BURDETTE LAND CONSULTING, INC.

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Telephone (919) 841-9977 - Fax (919) 841-9909

DATE: 03 10 09

DRAWN BY: TMB

PROJECT #: 7145

SCALE: AS SHOWN

CHK'D BY: JAB

CROSSECTION:
IMPACT # S2

ROAD DESIGN AND IMPACT INFORMATION PROVIDED BY
ARCADIA CONSULTING ENGINEERS, PLLC

STREET "A"
(50' PUBLIC R/W)

STREAM-C
(NT 2)

IMPACT # S3
STREAM CHANNEL-C
6 LF TEMPORARY
32 SQFT

51,699 SF
1.19 AC

IMPACT # S3
STREAM CHANNEL-C
102 LF PERMANENT
581 SQFT

OPEN
SPACE

STREAM-A
(CUB CREEK)

GRAPHIC SCALE
1" = 50'



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



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DRAWN BY: TMB

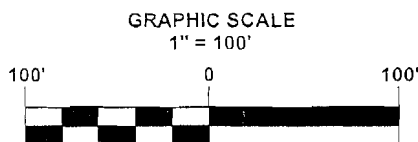
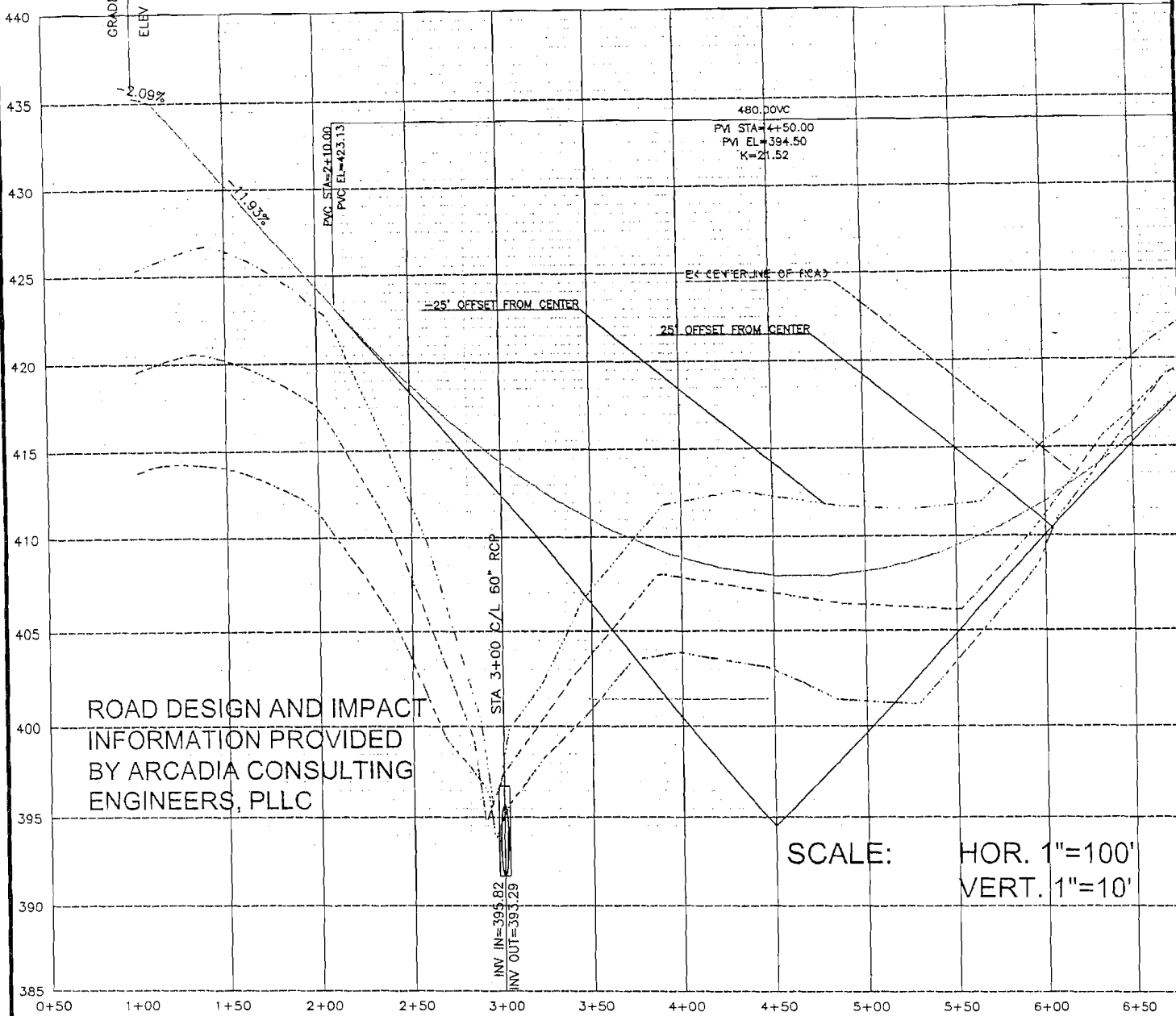
PROJECT #: 7145

SCALE: 1" = 50'

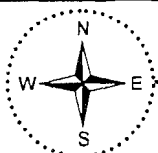
CHK'D BY: JAB

INSET: C

Profile View of STREET A



SURFACE WATER & WETLAND IMPACT MAP
LEGEND OAKS SUBDIVISION PHASE III
HPB PROPERTIES, LLC
CHAPEL HILL, CHATHAM COUNTY, NC



BURDETTE LAND CONSULTING, INC.

10212 Creedmoor Road - Raleigh, North Carolina 27615
Telephone (919) 841-9977 - Fax (919) 841-9909

DATE: 03/10/09

SCALE: AS SHOWN

DRAWN BY: TMB

CHK'D BY: JAB

PROJECT #: 7145

CROSSSECTION:
IMPACT # S3