



US Army Corps  
of Engineers  
Alaska District

# Public Notice of Application for Permit

Regulatory Division (1145)  
CEPOA-RD  
Post Office Box 6898  
JBER, Alaska 99506-0898

**PUBLIC NOTICE DATE:** December 27, 2012  
**EXPIRATION DATE:** January 28, 2013  
**REFERENCE NUMBER:** POA-2012-516  
**WATERWAY:** Tongass Narrows

Interested parties are hereby notified that a Department of the Army permit application has been received for work in waters of the United States as described below and shown on the enclosed project drawings.

Comments on the described work, with the reference number, should reach this office no later than the expiration date of this Public Notice to become part of the record and be considered in the decision. Please contact **Heather Boyer** at (907) 753-2877, toll free from within Alaska at (800) 478-2712, by fax at (907) 753-5567, or by email at [heather.l.boyer@usace.army.mil](mailto:heather.l.boyer@usace.army.mil) if further information is desired concerning this notice.

**APPLICANT:** Marble Island LLC, 355 Carlanna Lake Road, Ketchikan, Alaska 99901

**AGENT:** Bret Hiatt, R&M Engineering-Ketchikan Inc., 355 Carlanna Lake Road, Ketchikan, Alaska 99901, 907-225-7917

**LOCATION:** The project site is located within Section 29, T. 74 S., R. 90 E., Copper River Meridian; USGS Quad Map Ketchikan B-6; Latitude 55.4284° N., Longitude 131.7740° W.; Marble D1 Subdivision, current Lot 4B, future Lots 5-19; from the airport ferry parking lot turn left onto Tongass Avenue which becomes North Tongass Highway, go 7 miles and turn right onto D-1 Loop Road, project area is about 0.62 miles up the road on the right, in Ketchikan, Alaska.

**PURPOSE:** The applicant's stated purpose is to create additional residential view lots for the local real estate market by developing the subdivision to maximum allowable zone density in a practicable way and to be able to market the subdivision as having lots that have already been permitted with the Army Corps of Engineers and are ready to build.

**PROPOSED WORK:** The applicant proposes to place approximately 4,952 cubic yards of clean fill into 1.51 acre of wetland for a road and building pads for a new subdivision.

A detailed project description is provided in the enclosed plan. All work would be performed in accordance with the enclosed plan (sheets 1-12), dated November 2012.

APPLICANT PROPOSED MITIGATION: The applicant proposes the following mitigation measures to avoid, minimize, and compensate for impacts to waters of the United States from activities involving discharges of dredged or fill material.

a. Avoidance: The applicant avoided wetlands to the maximum extent practicable given the constraints of the existing topography and developing the most reasonable approach that would require the minimum site disturbance and most efficient layout of road and lots within the parcel of land owned by the applicant. Further details on avoidance are on sheet 11 of 12 on the enclosed plans dated November 2012.

b. Minimization: Development pads were designed to be efficiently sized to accommodate single family home development and were placed to minimize impacts to wetland areas. The subdivision was also designed to have a no net loss to creek channels through the process of rerouting and consolidating some of the drainage paths through the site as well as enhancing an existing drainage channel to accommodate the increased flow. For further details see sheet 12 of the enclosed plans dated November 2012.

c. Compensatory Mitigation: The applicant proposed compensatory mitigation at a 1:1 ratio via in-lieu-fee payment to the Southeast Alaska Land Trust. For further details see sheet 12 of the enclosed plans dated November 2012.

WATER QUALITY CERTIFICATION: A permit for the described work will not be issued until a certification or waiver of certification, as required under Section 401 of the Clean Water Act (Public Law 95-217), has been received from the Alaska Department of Environmental Conservation.

CULTURAL RESOURCES: The latest published version of the Alaska Heritage Resources Survey (AHRS) has been consulted for the presence or absence of historic properties, including those listed in or eligible for inclusion in the National Register of Historic Places. There are no listed or eligible properties in the vicinity of the worksite. Consultation of the AHRS constitutes the extent of cultural resource investigations by the District Commander at this time, and he is otherwise unaware of the presence of such resources. This application is being coordinated with the State Historic Preservation Office (SHPO). Any comments SHPO may have concerning presently unknown archeological or historic data that may be lost or destroyed by work under the requested permit will be considered in our final assessment of the described work.

ENDANGERED SPECIES: No threatened or endangered species are known to use the project area. We have determined the described activity would have no effect on any listed or proposed threatened or endangered species, and would have no effect on any designated or proposed critical habitat, under the Endangered Species Act of 1973 (87 Stat. 844). Therefore, no consultation with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service is required. However, any comments they may have concerning endangered or threatened wildlife or plants or their critical habitat will be considered in our final assessment of the described work.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). No EFH species are known to use the project area. Therefore, we have determined the described activity would not adversely affect EFH.

TRIBAL CONSULTATION: The Alaska District fully supports tribal self-governance and government-to-government relations between Federally recognized Tribes and the Federal government. Tribes with protected rights or resources that could be significantly affected by a proposed Federal action (e.g., a permit decision) have the right to consult with the Alaska District on a government-to-government basis. Views of each Tribe regarding protected rights and resources will be accorded due consideration in this process. This Public Notice serves as notification to the Tribes within the area potentially affected by the proposed work and invites their participation in the Federal decision-making process regarding the protected Tribal right or resource. Consultation may be initiated by the affected Tribe upon written request to the District Commander during the public comment period.

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. Requests for public hearings shall state, with particularity, reasons for holding a public hearing.

EVALUATION: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impacts, which the proposed activity may have on the public interest, requires a careful weighing of all the factors that become relevant in each particular case. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. The outcome of the general balancing process would determine whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur. The decision should reflect the national concern for both protection and utilization of important resources. All factors, which may be relevant to the proposal, must be considered including the cumulative effects thereof. Among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving 404 discharges, a permit will be denied if the discharge that would be authorized by such permit would not comply with the Environmental Protection Agency's 404(b)(1) guidelines. Subject to the preceding sentence and any other applicable guidelines or criteria (see Sections 320.2 and 320.3), a permit will be granted unless the District Commander determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the 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 the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

AUTHORITY: This permit will be issued or denied under the following authorities:

(X) Discharge dredged or fill material into waters of the United States - Section 404 Clean Water Act (33 U.S.C. 1344). Therefore, our public interest review will consider the guidelines set forth under Section 404(b) of the Clean Water Act (40 CFR 230).

Project drawings and a Notice of Application for State Water Quality Certification are enclosed with this Public Notice.

District Commander  
U.S. Army, Corps of Engineers

Enclosures

# STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION  
DIVISION OF WATER  
401 Certification Program  
Non-Point Source Water Pollution Control Program

DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
WQM/401 CERTIFICATION  
410 WILLOUGHBY AVENUE  
JUNEAU, ALASKA 99801-1795  
PHONE: (907) 465-5321/FAX: (907) 465-5274

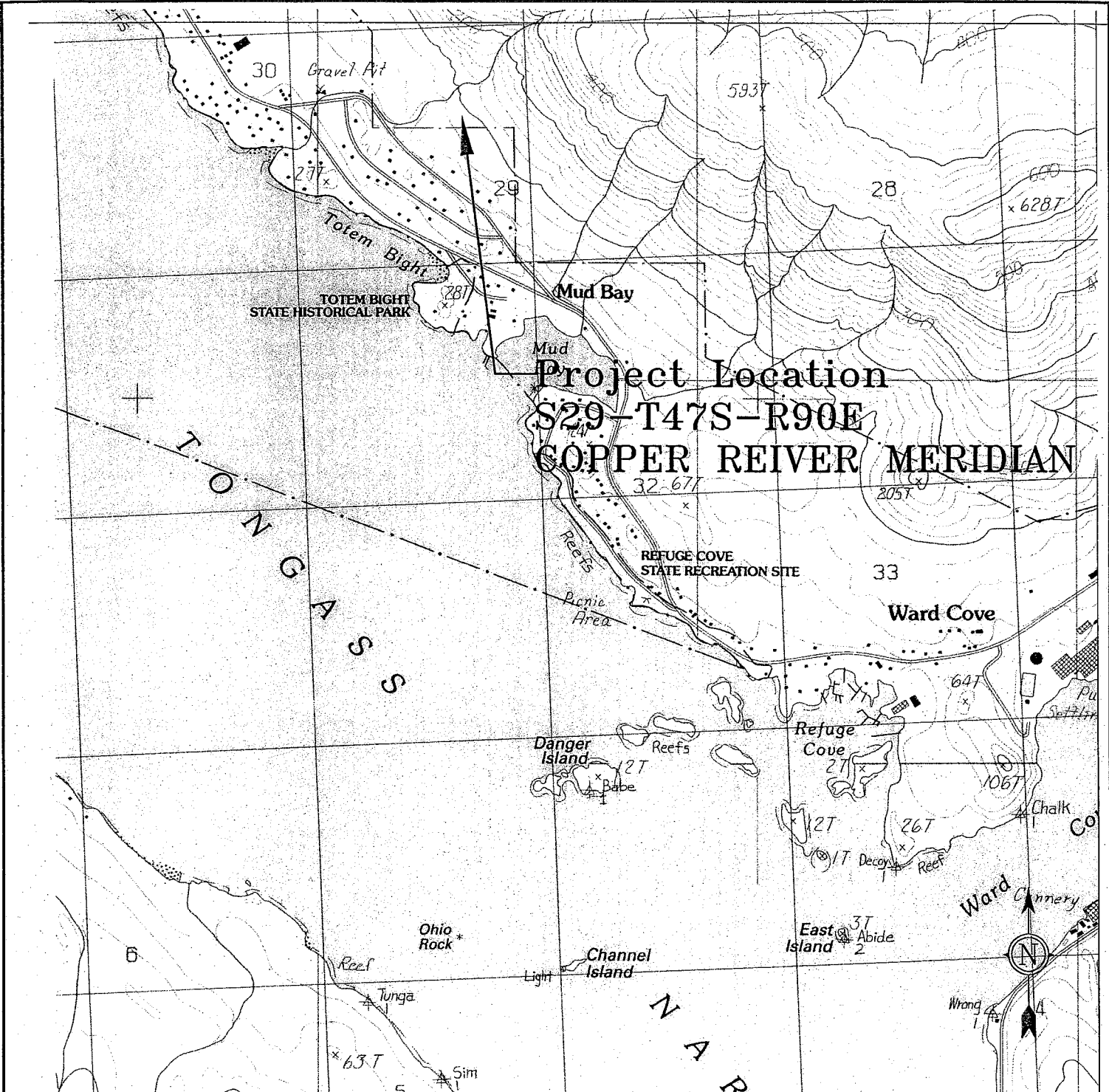
NOTICE OF APPLICATION  
FOR  
STATE WATER QUALITY CERTIFICATION

Any applicant for a federal license or permit to conduct an activity that might result in a discharge into navigable waters, in accordance with Section 401 of the Clean Water Act of 1977 (PL95-217), also must apply for and obtain certification from the Alaska Department of Environmental Conservation that the discharge will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. By agreement between the U.S. Army Corps of Engineers and the Department of Environmental Conservation, application for a Department of the Army permit to discharge dredged or fill material into navigable waters under Section 404 of the Clean Water Act also may serve as application for State Water Quality Certification.

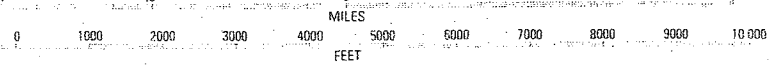
Notice is hereby given that the application for a Department of the Army Permit described in the Corps of Engineers' Public Notice No. POA-2012-516, Tongass Narrows, serves as application for State Water Quality Certification from the Department of Environmental Conservation.

After reviewing the application, the Department may certify there is reasonable assurance the activity, and any discharge that might result, will comply with the Clean Water Act, the Alaska Water Quality Standards, and other applicable State laws. The Department also may deny or waive certification.

Any person desiring to comment on the project, with respect to Water Quality Certification, may submit written comments to the address above by the expiration date of the Corps of Engineer's Public Notice.



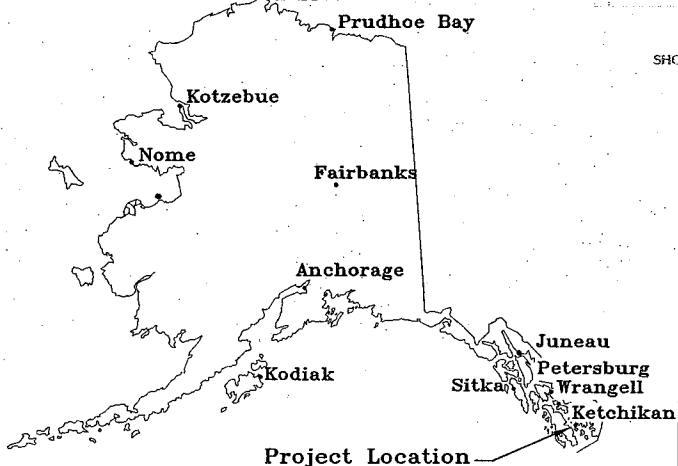
Location Map: Not To Scale



CONTOUR INTERVAL 20 METERS

SHORELINE SHOWN REPRESENTS THE APPROXIMATE LINE OF MEAN HIGH WATER  
 THE MEAN RANGE OF TIDE IS APPROXIMATELY 4.0 METERS  
 CONTROL ELEVATIONS SHOWN TO THE NEAREST 0.1 METER  
 OTHER ELEVATIONS SHOWN TO THE NEAREST METER

To convert meters to feet multiply by 3.2808  
 To convert feet to meters multiply by .3048



# MARBLE D1 SUBDIVISION

LOCATION & VICINITY MAP  
 SCALE: AS NOTED

Marble Island LLC  
 POA-2012-516  
 Tongass Narrows  
 November 2012  
 Sheet 1 of 12

LOT 4A

TRACT K  
USS 815

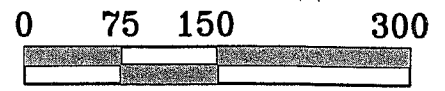
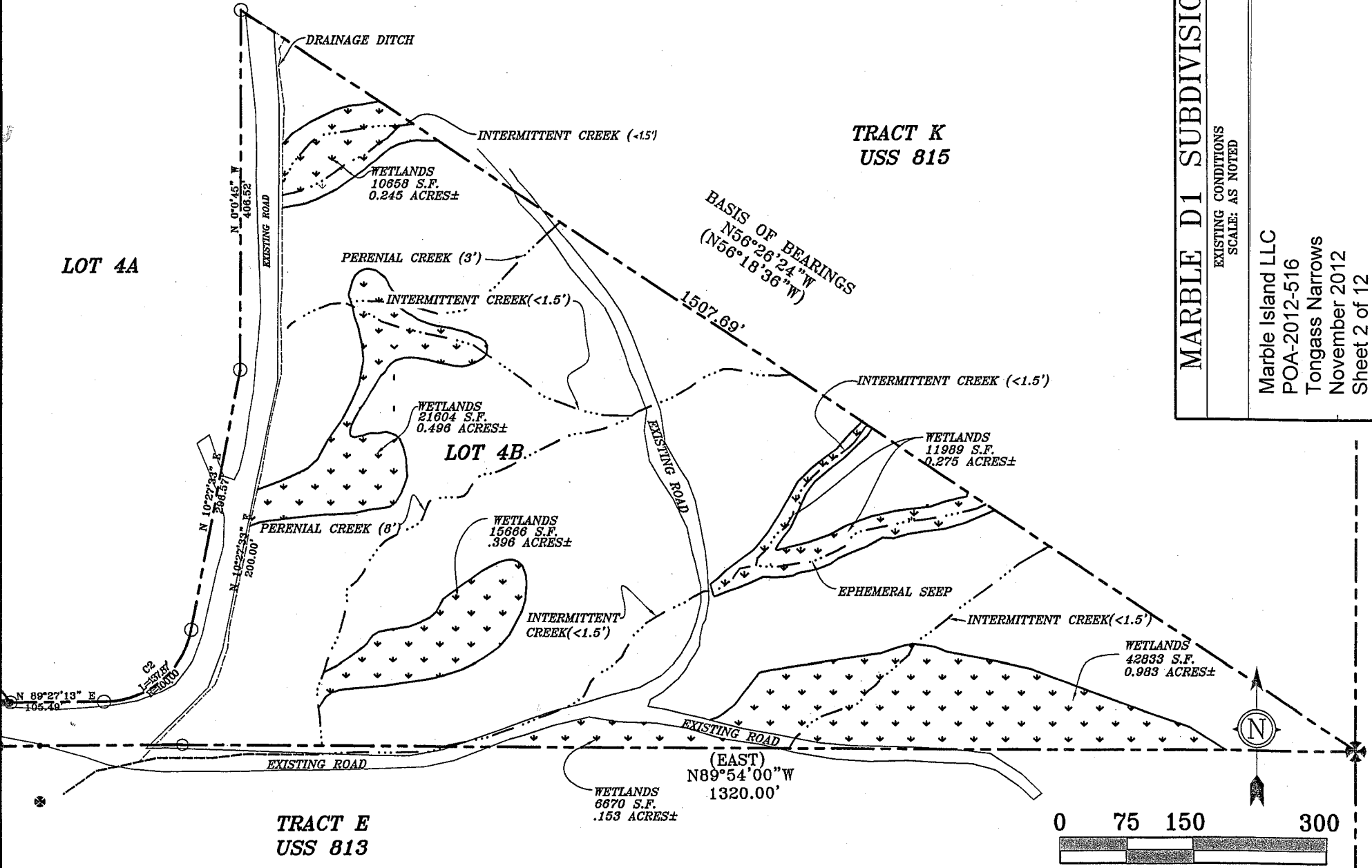
LOT 4B

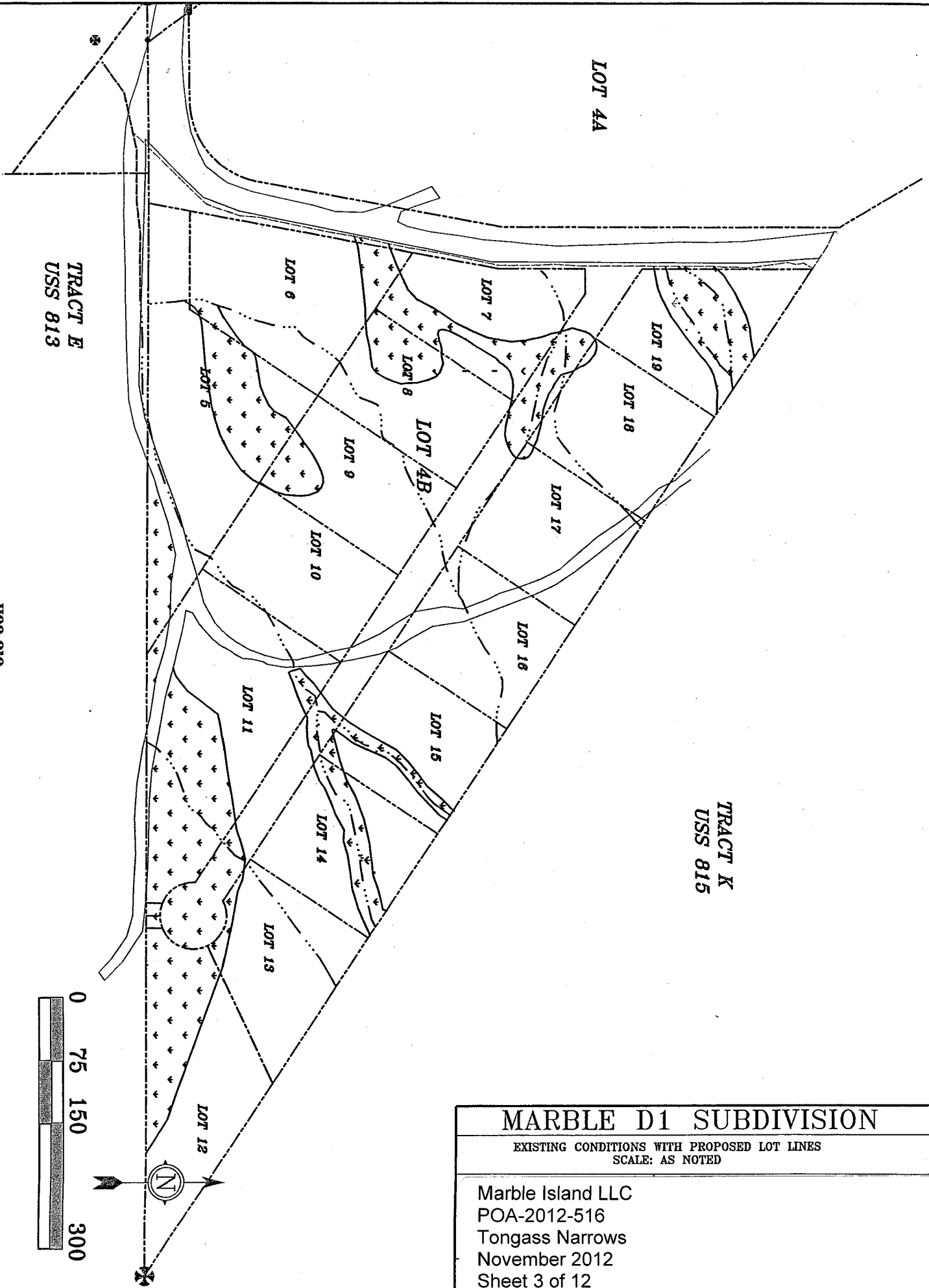
TRACT E  
USS 813

MARBLE D1 SUBDIVISION

EXISTING CONDITIONS  
SCALE: AS NOTED

Marble Island LLC  
POA-2012-516  
Tongass Narrows  
November 2012  
Sheet 2 of 12





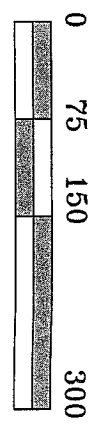
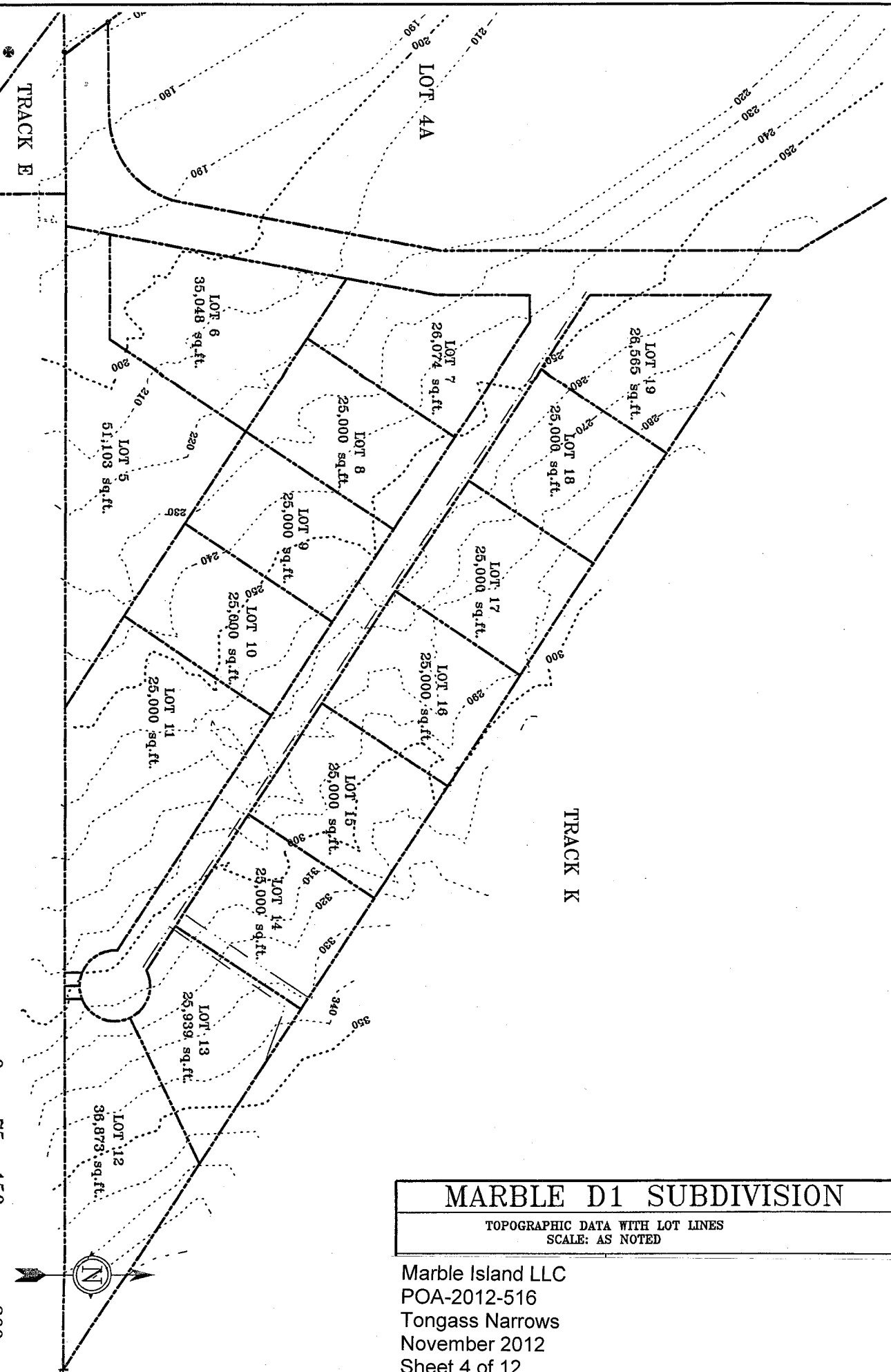
# MARBLE D1 SUBDIVISION

EXISTING CONDITIONS WITH PROPOSED LOT LINES  
SCALE: AS NOTED

Marble Island LLC  
POA-2012-516  
Tongass Narrows  
November 2012  
Sheet 3 of 12



USS 813



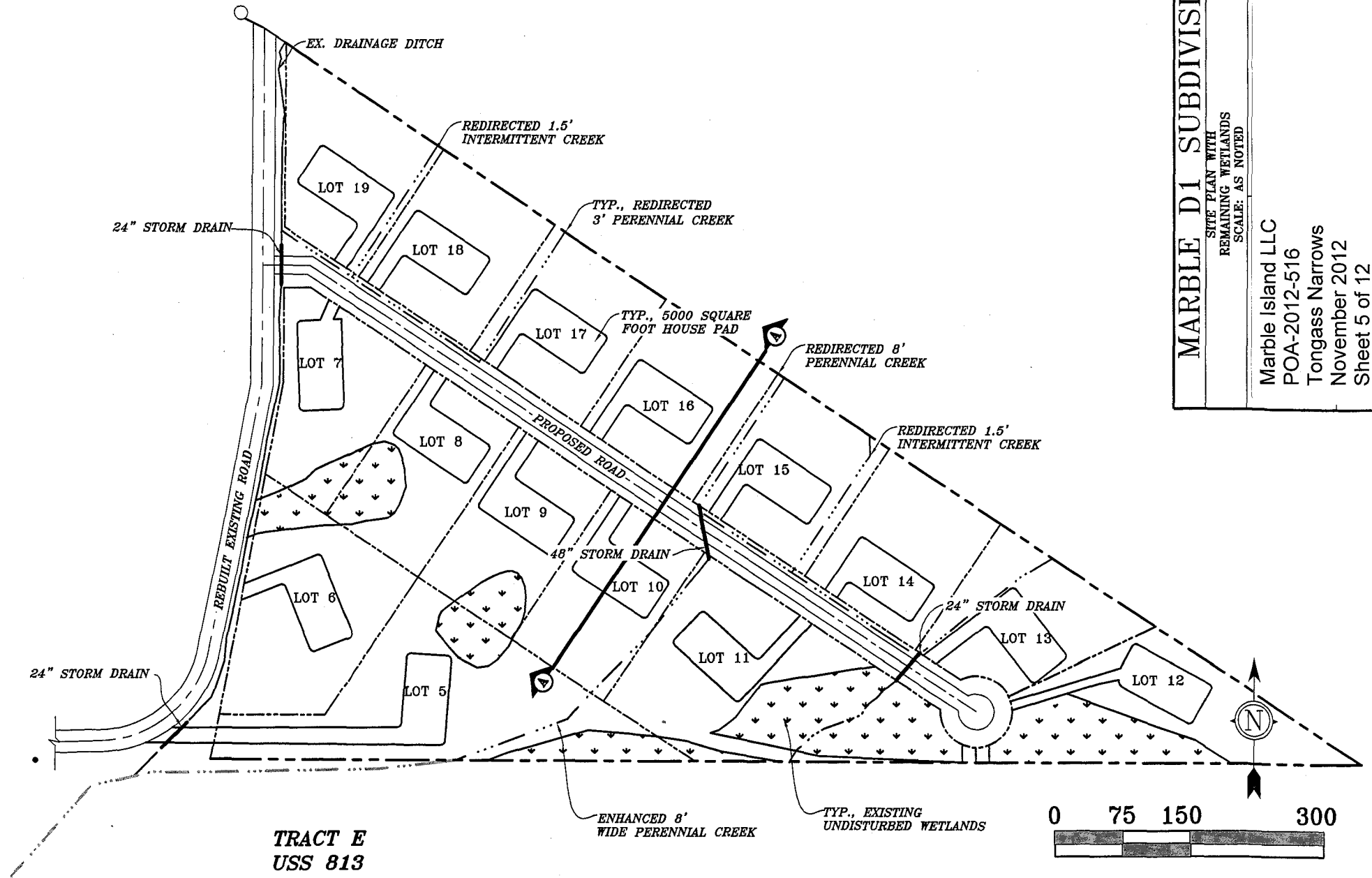
**MARBLE D1 SUBDIVISION**  
 TOPOGRAPHIC DATA WITH LOT LINES  
 SCALE: AS NOTED

Marble Island LLC  
 POA-2012-516  
 Tongass Narrows  
 November 2012  
 Sheet 4 of 12

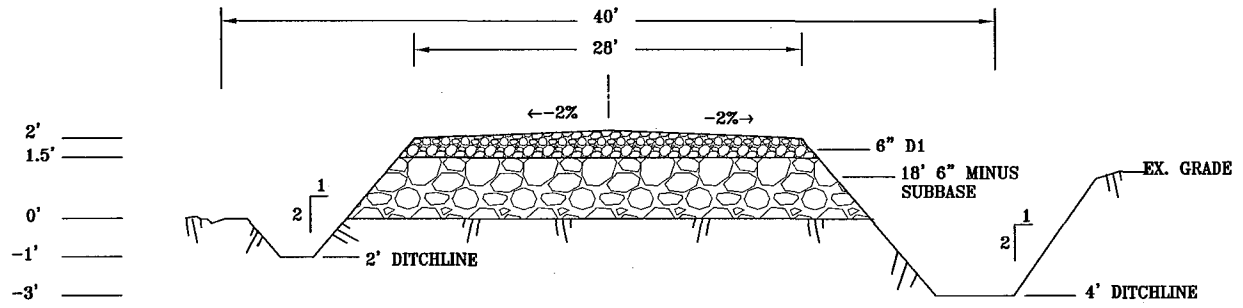
**MARBLE D1 SUBDIVISION**

SITE PLAN WITH  
REMAINING WETLANDS  
SCALE: AS NOTED

Marble Island LLC  
POA-2012-516  
Tongass Narrows  
November 2012  
Sheet 5 of 12

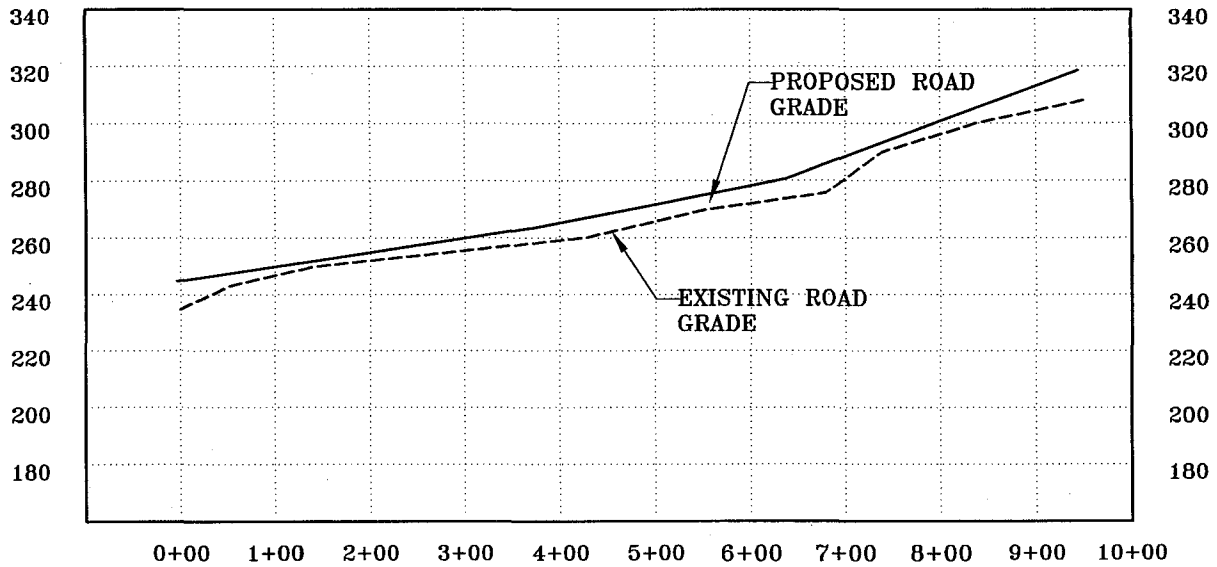


**TRACT E  
USS 813**



**SECTION OF ROAD "B"**

HORIZONTAL 1"=10'  
2X VERTICAL SCALE

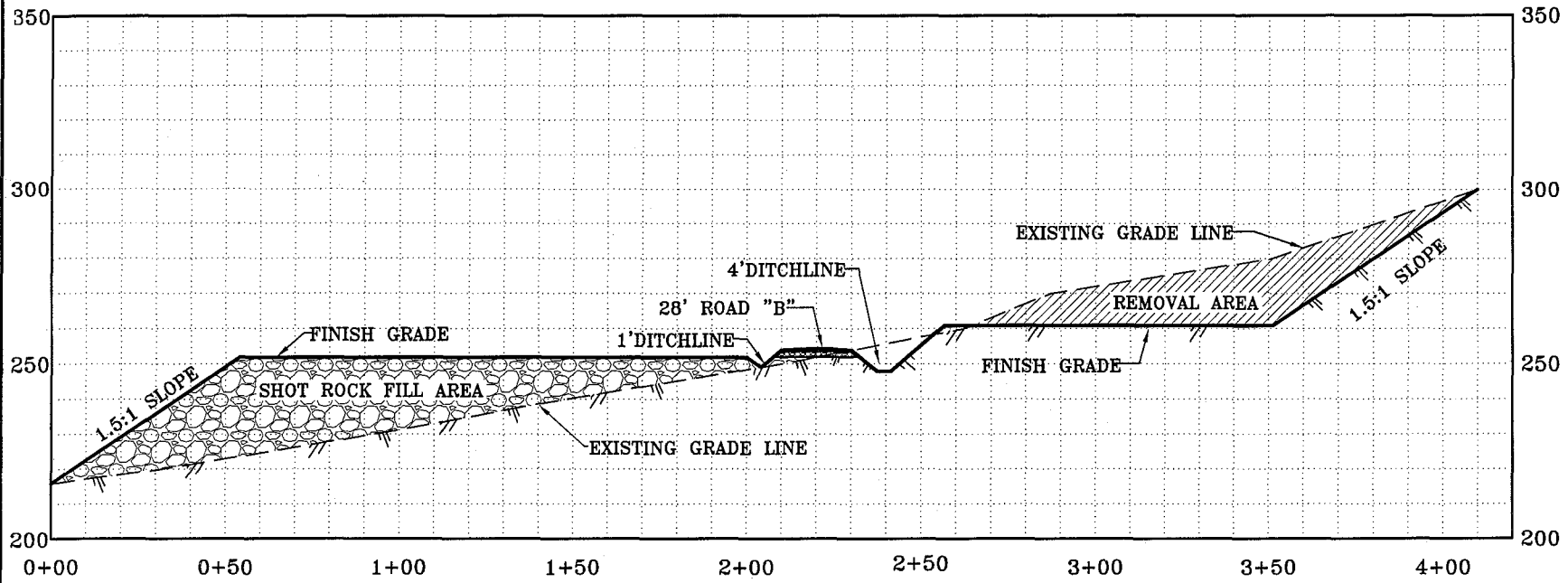


**CENTER LINE PROFILE OF NEW ROAD**

**MARBLE D1 SUBDIVISION**

ROAD PROFILE & SECTION  
SCALE: AS NOTED

Marble Island LLC  
POA-2012-516  
Tongass Narrows  
November 2012  
Sheet 6 of 12



TYP., SECTION A-A

HORIZONTAL 1"=50'  
 1X VERTICAL SCALE

MARBLE D1 SUBDIVISION

LOT SECTION

Marble Island LLC  
 POA-2012-516  
 Tongass Narrows  
 November 2012  
 Sheet 7 of 12

**Block 18, Nature of Activity**

The project includes the subdivision of Lot 4B of Tract J ASLS 81-39 White Rock Estates Subdivision Phase III. This subdivision will include the creation of 15 residential homesite lots within the current Future Development (FD) zone that calls for a minimum lot size of 25,000 sf per lot. Each subdivided lot will have access platted and developed along the planned subdivision road right-of-ways. The roads will be gravel surfaced roads. In conjunction with the subdivision will be the diversion consolidation and containment of some of the small stream channels that transfer rain runoff down the steep hillsides behind the subdivision. This collection of storm water runoff will not generally reduce the area of stream channel present, it will simply reroute it to accommodate the individual subdivision lots and protect potential erosion points of individual development pads. The main perennial creek will be rerouted to follow an enhanced existing drainage channel. Each lot will have a defined building pad developed. Hillside Lots on uphill slopes from the roadway will be cut into the hillside and Lots down slope of the roadway will have fill pads. (See Plan Sheets attached).

Road development is 980 feet long 28 foot wide gravel access road accessing all but two of the proposed subdivision Lots and will include culvert at creek crossings and driveway crossings over the diversion runoff stream.

Development pad construction will consist of six fill lots and nine cut and fill lots.

A wetlands delineation was performed in 2011 and the 2012 approved ACOE JD is attached.

**Block 21 Types of Materials Being Discharged and the Amount of Each Type**

**Roadway:** 980' x 28' finished width, average disturbed width is 43 feet with ditching

	<u>Project Total</u>	<u>Within Wetlands</u>
Total Excavation for Road	1,500 cy	838 cy
Shot Rock Embankment for Road	1,500 cy	240 cy
Crushed Aggregate Surfacing	300 cy	60 cy
Disturbed Area	42,680 sf, (0.97 acre)	14,665 sf, (0.33 acre)

	<u>Project Total</u>	<u>Within Wetlands</u>
<b>Storm Water Collection System</b>		
24" Culvert Pipe	120 Feet	40 Feet
48" Culvert Pipe	100 Feet	40 Feet

	<u>Project Total</u>	<u>Within Wetlands</u>
<b>Building Sites</b>		
Excavation for Pads	11,111 cy	2,000 cy
Shot Rock Fill for Pad	9,200 cy	1,800 cy
Disturbed Area	442,903 sf (10.2 acres)	51,060 sf, (1.18 acre)

	<u>Project Total</u>	<u>Within Wetlands</u>
<b>Impacts to Streams</b>		
8' wide streams impacted (Perennial)	774 Feet	0 Feet
3' wide streams impacted (Perennial)	356 Feet	51 Feet
1.5' wide streams impacted (Intermittent)	1,317 Feet	741 Feet
Total Fill in Streams	2,242 cy	14 cy

One intermittent creek of 378 linear feet that is 1.5 feet wide will not be disturbed. 191 linear feet of which are located within one of the wetland areas not impacted. However, 0.21 acres of the 0.23 total acres of stream channels will be impacted prior to quantifying the efforts in the plan to manage drainage and mitigate overall impacts. Offsets to those impacts are detailed below:

Intermittent creek flows are generally either rerouted or enhanced to provide capacity for larger perennial flows. The intermittent creeks within Lot 19 are consolidated and rerouted down the east property line into one 175 linear foot channel. The redirection of the largest perennial creek will eliminate a 353 linear foot intermittent creek that originated from that drainage, the existing flow combined with the rerouted perennial channel. The intermittent creek flowing through Lot 15 will also be redirected into a 175 linear foot channel above the road and the remaining channel below the road will be enhanced to accommodate the redirection perennial flows.

The perennial creek flowing through Lot 17 on the west side will be rerouted to a new 3 foot wide 175 linear foot long channel. This flow and the flow from the intermittent diversion on Lot 19 will collect into a new 4 foot ditch line following the subdivision road providing a 4 foot wide 266 linear foot drainage channel redirecting this flow to an existing drainage ditch. The flow removed from an ephemeral seep and intermittent creek located between Lots 15 and 14 are rerouted into another 4 foot wide ditch that will collect this consolidated flow discharge it into a rerouted perennial flow passing through Lot 11. The 8 foot wide perennial creek will be rerouted through Lot 15&16 property line across the roadway within a Culvert and follow the enhanced 386 linear foot portion of a channel of an existing intermittent creek.

Based on the above rerouted or enhanced channels relieving or offsetting impacts the amount of area impacted is estimated to be reduced from 0.21 acres to 0.02 acres

In addition there will be 660 lineal feet or 7,320 square feet of channel area that will be enhanced along the western property line along the existing open ditch line.

Based on the re-routing of creek channels and the enhancement anticipated there would be no net loss of the creek channel area transferring upslope runoff through the site essentially eliminating any functional or actual losses potentially contributable to the impacts to these property features. The only impacts that are anticipated to be realized are to the minimal wetland areas not inclusive of the creeks.

All creek channels will have revegetated side slopes to protect against bank erosion.

**Block 22 Wetlands Impacted**

Roads 14,665 square feet (0.33 acres)

Lot Development 51,060 square feet (1.18 acres)

**Total Wetlands Impacted: 1.51 acres**

## Applicant Proposed Mitigation Statements

### Background:

The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency issued regulations that govern national compensatory mitigation policy for activities in waters of the U.S., including wetlands, authorized by Corps permits. The final mitigation rule was published in the federal register on April 10, 2008, and became effective on June 9, 2008. The final rule establishes standards and criteria for the use of appropriate and practicable compensatory mitigation for unavoidable functional losses of aquatic resources authorized by Corps permits (33 CFR Part 332). Additionally, the rule requires new information to be included in Corps permit applications and public notices to enable meaningful comments on applicant proposed mitigation. In accordance with 33 CFR Part 325.1(d)(7), "For activities involving discharges of dredged or fill material into waters of the U.S., the application must include a statement describing how impacts to waters of the United States are to be avoided and minimized. The application must also include either a statement describing how impacts to waters of the United States are to be compensated for or a statement explaining why compensatory mitigation should not be required for the proposed impacts." For additional information, the final mitigation rule can be viewed at: [http://www.usace.army.mil/cw/cecwo/reg/news/final\\_mitig\\_rule.pdf](http://www.usace.army.mil/cw/cecwo/reg/news/final_mitig_rule.pdf)

Mitigation is a sequential process of avoidance, minimization, and compensation. Compensatory mitigation is not considered until after all appropriate and practicable steps have been taken to first avoid and then minimize adverse impacts to the aquatic ecosystem. Please provide your proposed avoidance, minimization, and compensatory mitigation below:

### Applicant's Proposed Mitigation (attach additional sheets as necessary):

#### 1. Avoidance of impacts to waters of the U.S., including wetlands:

*Please describe how, in your project planning process, you avoided impacts to waters of the U.S., including wetlands, to the maximum extent practicable. Examples of avoidance measures include site selection, routes, design configurations, etc...*

Site selection was based on the applicants ownership of the parcel. The design of the subdivision was planned for the maximum utility of each Lot within the subdivision. This process included the most efficient layout of roads, Lots, and building pads by working within the constraints of the existing topography and developing the most reasonable approach that would require the minimum site disturbance. This approach not only cuts down on the impacts in the wetlands, but also cuts down on construction costs as well.

The roadway follows a natural bench that traverses the larger original parcel. Pad design for the individual Lots were designed to be the smallest practicable size to accommodate a reasonable building envelope with the least site disturbance and wetland impacts. Creek rerouting was designed to establish a "no net loss" to the channel area to efficiently direct surface run off from the steep upper hillsides through the site in a way to eliminate potential erosion dangers while still maintaining the down gradient flow and increasing the perennial flow which in-turn will improve function.



## Applicant Proposed Mitigation Statements

### 2. Minimization of unavoidable impacts to waters of the U.S., including wetlands:

*Please describe how your project design incorporates measures that minimize the unavoidable impacts to waters of the U.S., including wetlands, by limiting fill discharges to the minimum amount/size necessary to achieve the project purpose.*

Development pads were designed to be efficiently sized to accommodate single family home development and were placed to minimize impacts to wetland areas. In addition, as stated above the subdivision was designed to have "no net loss" to creek channel area through the process of rerouting and consolidating some of the drainage paths that pass through the site as well as enhancing an existing drainage channel to accommodate the increased flow. The western property ditch line will also be enhanced to accommodate the increased flow including seeding the cut banks to control erosion.

Moreover, an appropriate Storm Water Pollution Prevention Plan will be implemented during site work at this location to ensure the minimization of any potential related temporary impacts during construction.

### 3. Compensation for unavoidable impacts to waters of the U.S., including wetlands:

*Please describe your proposed compensatory mitigation to offset unavoidable impacts to waters of the U.S., or, alternatively, why compensatory mitigation is not appropriate or practicable for your project. Compensatory mitigation involves actions taken to offset unavoidable adverse impacts to waters of the U.S., including wetlands, streams and other aquatic resources (aquatic sites) authorized by Corps permits. Compensatory mitigation may involve the restoration, enhancement, establishment (creation), and/or the preservation of aquatic sites. The three mechanisms for providing compensatory mitigation are mitigation banks, in-lieu fee of mitigation, and permittee-responsible mitigation. Please see the attached definitions for additional information.*

This project is not located within an area containing rare, difficult to replace, or threatened wetland areas. Nor is it a large scale project. There will be no functional losses to the down gradient drainage of surface water run off associated with the existing small creek channels, as the newly created stream channel will establish the improved volume and stream bed capacity to enhance the size of what is existing. Rerouting contributing intermittent creeks to add volume to a higher functioning perennial stream channel will become beneficial. In addition, the project is located within a large watershed that above the subject site will not see development aside from rotational resource extraction of the timber. In fact, within the overall Ketchikan Gateway Borough there is approximately 4,900 square miles of land area and only 0.005 percent is privately owned according to the Ketchikan Gateway Borough GIS. Therefore, private development will generally have a very minimal almost unmeasurable cumulative impact.

The subject site impacts are to PFO4Bn Forested wetlands along a moderate to steep sloping hillside as identified with the attached Jurisdictional Determination POA -2012-516. Following the "Wetlands Functions And Services" form would indicate that the subject wetlands would be Class III wetlands of moderate to low function.

Marble Island LLC proposes to conserve impacted wetlands at a 1:1 ratio. This ratio is reasonable for the class of wetlands impacted and the steepness of the terrain in this primarily upland parcel. There are no local conservation sources and the closest "in lieu fee" program that serves this area is the Southeast Alaska Land Trust. Therefore the applicant will work with the SEAL Trust for compensatory mitigation.