



SUPPLEMENTAL PUBLIC NOTICE

US Army Corps
of Engineers
New York District
Jacob K. Javits Federal Building
New York, N.Y. 10278-0090
ATTN: Regulatory Branch

In replying refer to:

Public Notice Number: 1993-00080-3-RS
Issue Date: 5 August 2004
Expiration Date: 7 September 2004

To Whom It May Concern:

The New York District, US Army Corps of Engineers (USACE) is considering the reinstatement, modification, or revocation of a Department of the Army permit, Number 1993-00082. The permit was issued to F. D. & P. Enterprises, Inc. (FDP) in December, 2002, and modified in August, 2003 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344). USACE partially suspended this permit on July 21, 2004. The history of this permit is further described on page 3 of this notice.

PERMITTEE: F. D. & P. Enterprises, Inc.
P.O. Box 1067
Secaucus, NJ 07096-1067

ACTIVITY: Discharge of fill material into waters of the United States

WATERWAY: Wetlands adjacent to Penhorn Creek, a tributary of the Hackensack River

LOCATION: City of Jersey City, Hudson County, New Jersey.

The decision whether to reinstate, modify, or revoke FDP's permit will be based on a reevaluation of the probable impact, including cumulative impacts, of the permitted activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the permittee's project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, floodplain 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 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 reevaluate the impacts of the permitted project. Any comments received will be considered by USACE to determine whether to reinstate, modify, or revoke the permit issued to FDP. 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 preparation of any necessary 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 in the reinstatement, modification, or revocation of FDP's permit.

ALL COMMENTS REGARDING THE REINSTATEMENT, MODIFICATION, OR REVOCATION OF THE FDP PERMIT MUST BE PREPARED IN WRITING AND MAILED TO REACH THIS OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to any of these actions.

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Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary and unavailable through correspondence to consider the proposed reinstatement, modification, or reinstatement of the FDP permit. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

FDP has obtained other government permits or authorizations for its project as follows:

From the New Jersey Department of Environmental Protection:

- A) Coastal Zone Management Plan consistency determination
- B) Water Quality Certificate
- C) Stream Encroachment Permit
- D) Remedial Action Workplan (which authorized the use of non-residential material and amended dredged material on site)

New Jersey State Historic Preservation Office -- a statement that no historic properties exist on the site.
New Jersey Meadowlands Commission
Hudson County Planning Board
Hudson-Passaic-Essex Soil Conservation District

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning the reinstatement, modification, or revocation of the FDP permit, you may contact this office at (212) 264-0184 and ask for Mark Steven Roth.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>.



Richard L. Tomer
Chief, Regulatory Branch

Enclosures

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PERMIT DESCRIPTION

In 1999, the US Army Corps of Engineers New York District (USACE) issued Department of the Army Permit Number 1993-00080 to F. D. & P. Enterprises, Inc. (FDP). That permit authorized the discharge of clean fill material into approximately 53.5 acres of waters of the United States (including wetlands) on FDP's property adjacent to Penhorn Creek, a tributary of the Hackensack River in the City of Jersey City, Hudson County, New Jersey. A site map attached to this Public Notice, illustrates the area authorized to be filled. FDP has stated that the purpose of the discharge of fill material was to expand an existing intermodal transfer facility located on the FDP site and on adjacent property across Secaucus Road (although a discharge of fill material was not requested on the property across Secaucus Road). The FDP permit application had been the subject of USACE Public Notices issued in 1993 and 1998. When a dispute arose concerning mitigation, USACE suspended the 1999 permit.

Litigation ensued, and on December 17, 2002, USACE reinstated and modified the 1999 permit, designated as Department of the Army Permit Number 1993-00081. The 2002 action incorporated the terms of settlement of litigation in authorizing, as off-site mitigation, FDP's purchase of 40 acres of wetland credits at the Marsh Resources, Inc. mitigation bank. The 2002 permit also authorized placement of an increased volume of fill material, approximately 1.5 million cubic yards, as compared to approximately 1.0 million cubic yards of material authorized in 1999. FDP indicated it had revised its estimate of the volume of fill material to be used, based on its revised estimates of fill compaction. It should be noted that although the estimated volume of fill material to be placed changed, the final elevation on site (approximately 10 to 11 feet above Mean Sea Level) did not. Also, the project authorized by the 2002 permit did not include the placement of a previously planned at-grade railroad track crossing of Secaucus Road onto the FDP site. However, railroad tracks previously existing on the property across Secaucus Road would continue to be used. FDP has asserted that all of the 2002 modifications were conditions of settlement of litigation.

On August 27, 2003, the permit was again modified to allow the use of amended dredged material as fill on the project site, provided that the State of New Jersey would authorize such use (the latest modification is identified as Department of the Army Permit Number 1993-00082). Dredged material is amended when it has been dewatered and then mixed with an additive (such as flyash, portland cement, etc.) that makes the dredged material chemically inert and usable as structural fill. Due to the presence of historic fill on the site including, but not limited to the wetlands, FDP filed a Voluntary Memorandum of Agreement (MOA) Application with the New Jersey Department of Environmental Protection. In the MOA application, FDP requested a Remedial Action Workplan (RAWP) approval for the filling of the site pursuant to the State's Technical Requirements for Site Remediation. This RAWP was approved on September 24, 2003 and the use of amended dredged material on the FDP site was authorized as part of the site specific RAWP. Discharge of fill material began on the site in May 2003, and USACE has determined that fill material has now been placed on 85% to 90% of the authorized area. FDP presently appears to be substantially in compliance with the terms of the permit.

Since the most recent modification of the FDP permit, USACE has received letters from the US Fish and Wildlife Service and the US Environmental Protection Agency, and additional litigation was commenced, all primarily protesting the permit modifications identified above. Primarily,

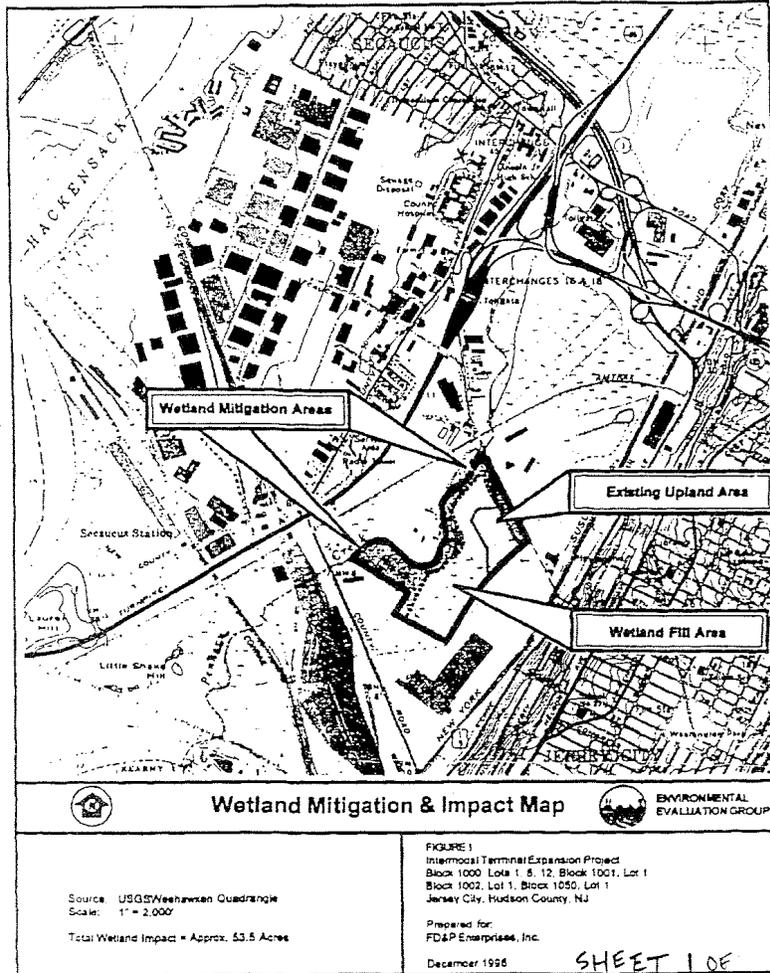
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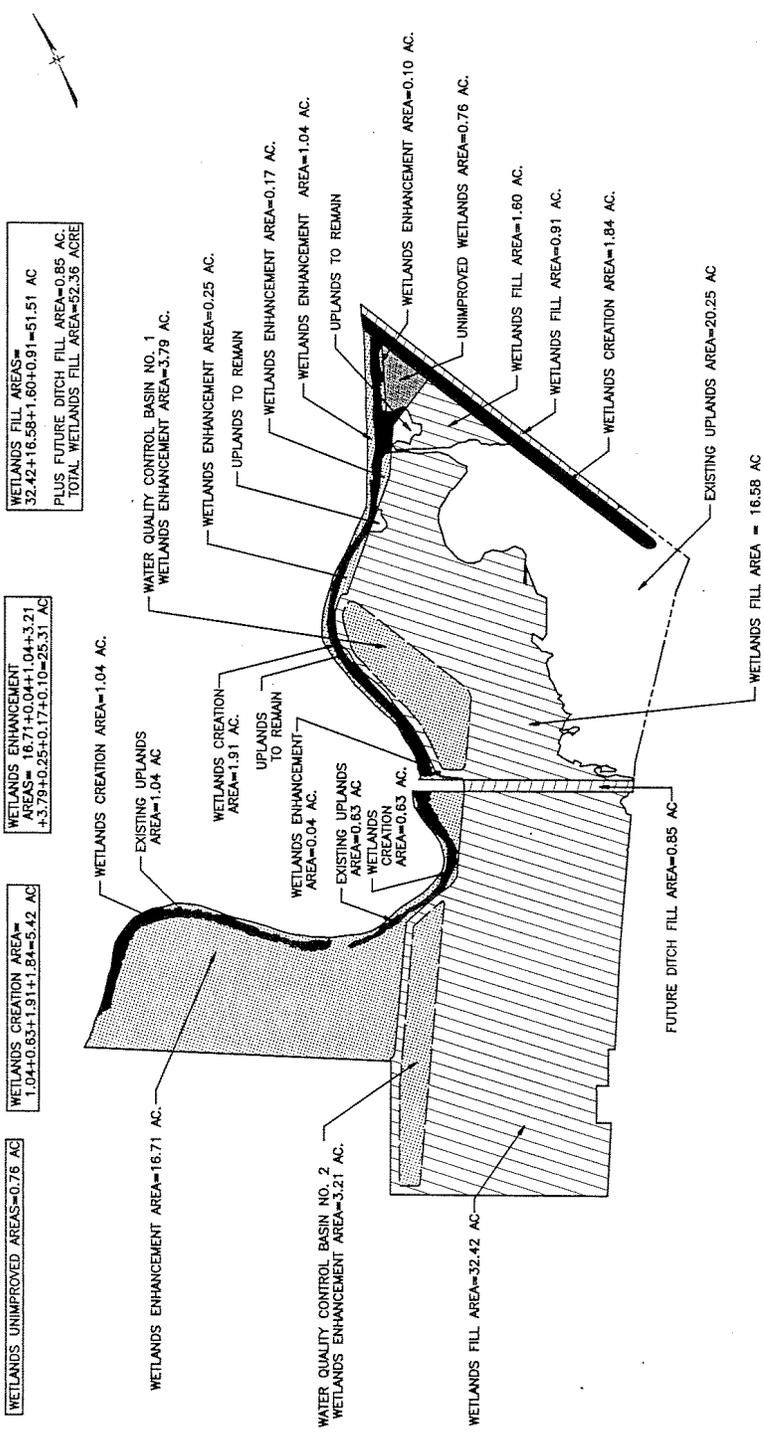
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correspondents and litigants raised the following concerns: a) environmental assessment of the permit modifications was incomplete; b) elimination of railroad track on the FDP site could have reduced the footprint of the project or lead to selection of an alternate site; c) amended dredged material should not be used as fill; d) mitigation agreed upon in settlement of earlier litigation is inadequate; e) an increased volume of fill may have adverse effects, for example to flood storage and capacity; and f) FDP is not in compliance with conditions of its State authorizations, incorporated into its Department of the Army permit.

In response to those concerns, USACE has determined that it is in the public interest to reevaluate the FDP permit modifications, particularly as regards the issues identified above. During USACE reevaluation and in accordance with Title 33 of the Code of Federal Regulations, Part 325.7, FDP has been directed to suspend a portion of its filling activities, so as to 1) prohibit the discharge of any fill material in the presently undisturbed waters of the United States on the site, and 2) provide that fill material, including amended dredged material, may continue to be placed on-site in an area already disturbed by fill in accordance with the permit, but only starting at the pre-existing 20-acre upland portion of the site and working outward as the design elevation is achieved.

USACE seeks public comment to aid in its reevaluation of the issues noted above. When reevaluation is completed, in accordance with Title 33 of the Code of Federal Regulations, Part 325.7, USACE will take action to reinstate, modify, or revoke the permit.





WETLANDS FILL AREAS=
 $32.42+16.58+1.60+0.91=51.51$ AC
 PLUS FUTURE DITCH FILL AREA=0.85 AC
 TOTAL WETLANDS FILL AREA=52.36 ACRES

WETLANDS ENHANCEMENT
 AREAS= $16.71+0.04+1.04+3.21$
 $+3.79+0.25+0.17+0.10=25.31$ AC

WETLANDS CREATION AREA=
 $1.04+0.63+1.91+1.84=5.42$ AC

WETLANDS UNIMPROVED AREAS=0.76 AC

WETLANDS AND FILL AREAS EXHIBIT TO ACCOMPANY
 ARMY CORPS OF ENGINEERS PERMIT NO. 1993-00081

ERNST, ERNST & LISSENDE
 ENGINEERS & SURVEYORS
 P.O. Box 391, 100 Years Blvd., Torrance River, New Jersey 08733
 CHECKED BY: [Signature] DATE: [Blank]
 SHEET NO. 1 OF 1

TOTAL EXISTING WETLANDS PRIOR TO CONSTRUCTION
 =100.71-21.92=78.79 AC

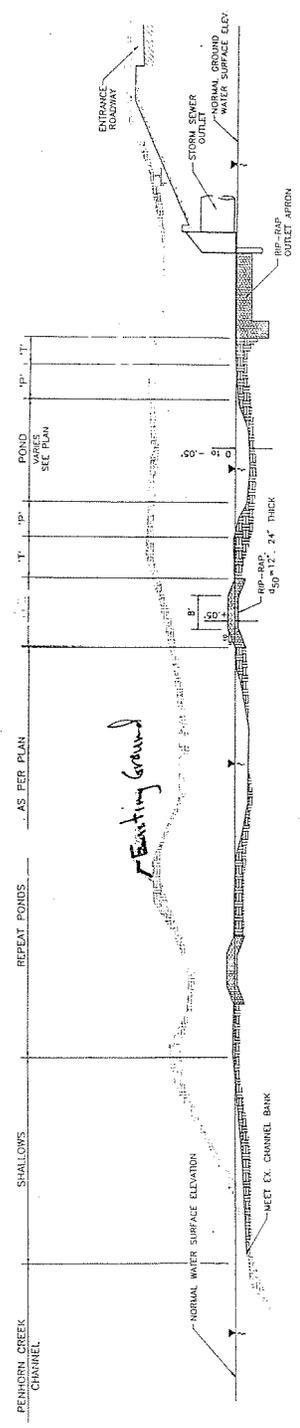
UPLANDS AREAS PRIOR TO CONSTRUCTION
 =20.25+0.63+1.04=21.92 AC

SHEET 20F9

HEET 4 of 9

CHANNEL ADJACENT TO SECAUCUS ROAD

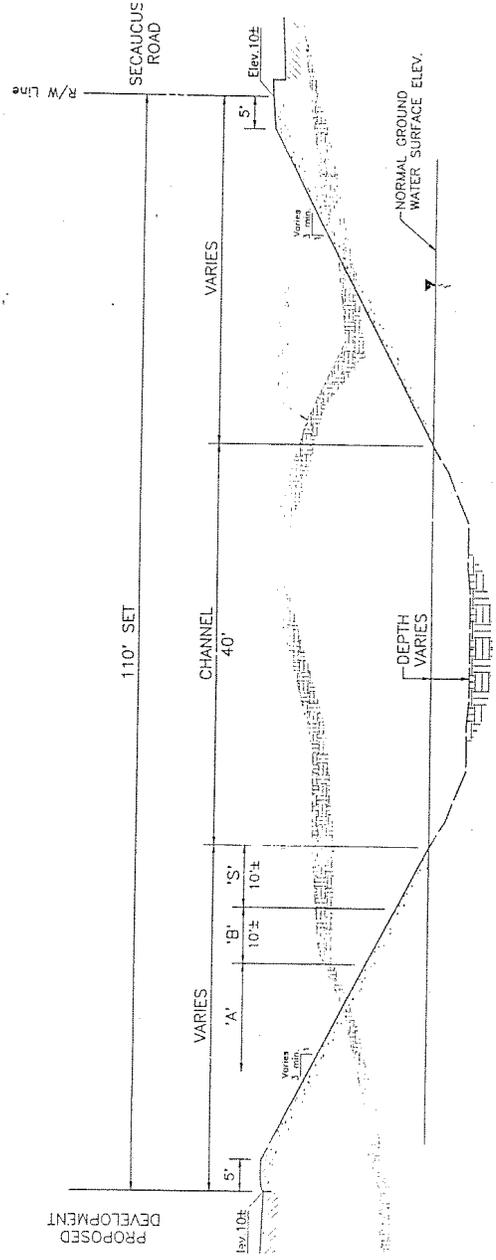
NOT TO SCALE



PROFILE

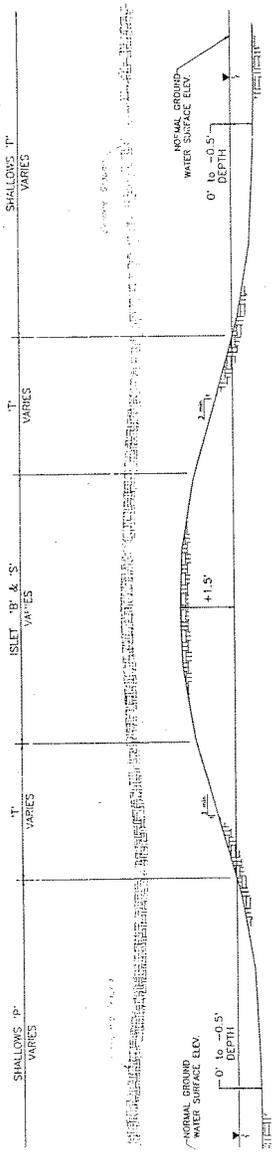
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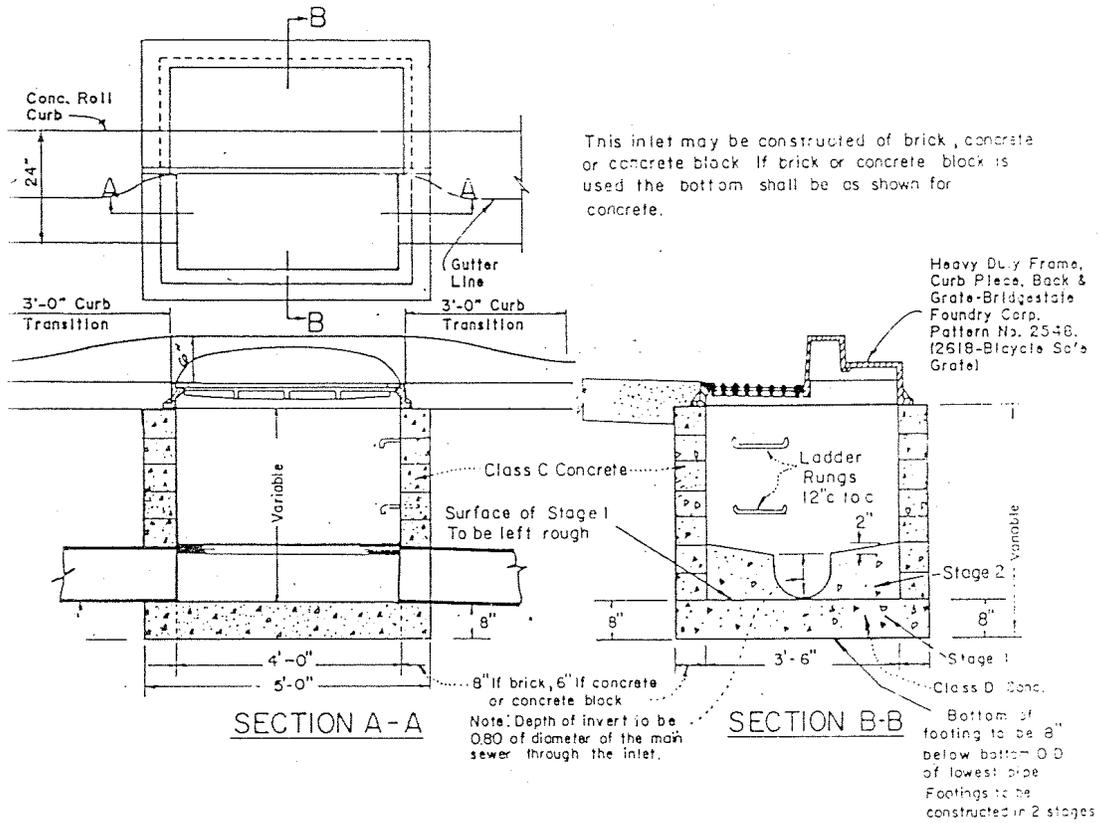
CROSS SECTION

SHEET 6 of 9



WETLANDS ENHANCEMENT AREAS
NOT TO SCALE

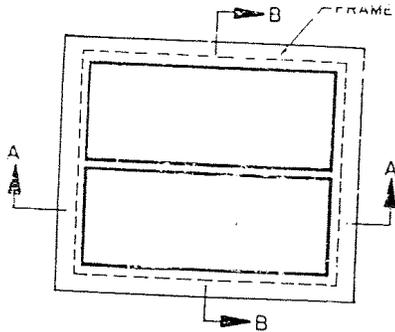
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INLET TYPE B

SHEET 7 of 9

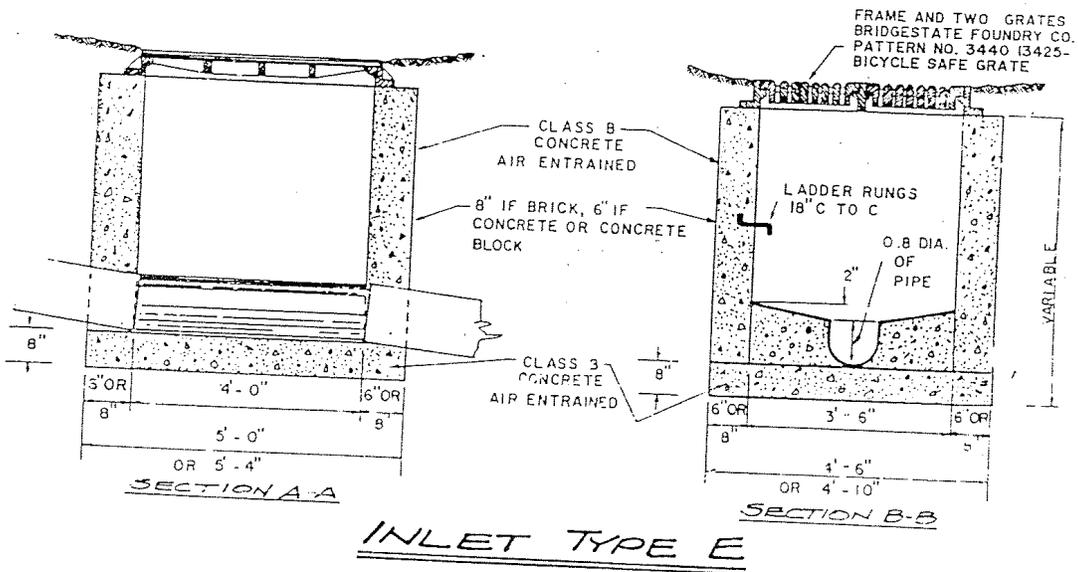
TYPICAL SECTION - WATER QUALITY BASIN



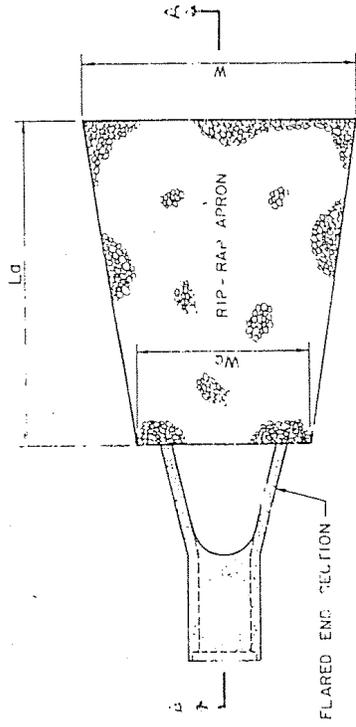
DEPTH OF INVERT TO BE 0.80
THE DIAMETER MAIN SEWER
THROUGH THE INLET.

INVERTS TO BE ELIMINATED
IN BOTTOM OF TERMINAL INLETS.
BOTTOMS SHALL BE DISHED AND
SLOPED TOWARDS THE OUTLET
PIPE AT A RATE OF GRADE OF
2" PER FOOT.

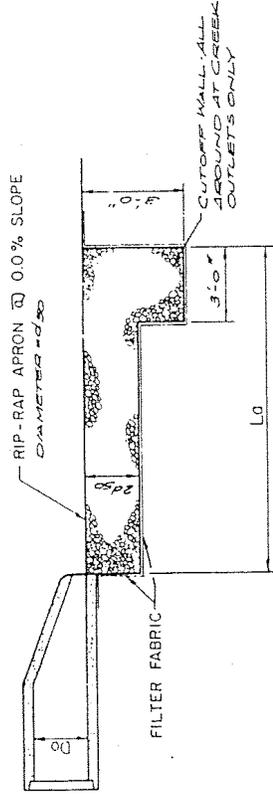
THIS INLET MAY BE CONSTRUCTED OF BRICK,
CONCRETE OR CONCRETE BLOCK. IF BRICK OR
CONCRETE BLOCK IS USED THE BOTTOM
SHALL BE AS SHOWN FOR CONCRETE.



TYPICAL SECTION - WATER QUALITY BASIN



PLAN



SHEET

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