



January 11, 2019

MR PATRICK EAGAN
ICONICA INC
901 DEMING WAY
STE 102
MADISON WI 53717

Subject: Conditional Approval for On-Site Management of Contaminated Soil under
Wis. Adm. Code § NR 718.12

Generator property: Pelican's Nest (Proposed), 975 & 980 E. John St., Appleton, WI
Parcel Number: 311077201 (Lot 2 of CSM 7281)

DNR Site Name: Foremost Farms (Former), Formerly 935 E. John St. (Lots 1-3 of CSM 7281)
BRRTS #02-45-530084

Dear Mr. Eagan:

On October 16, 2018, the Department of Natural Resources (DNR) received a request, *Soil Management Plan - Addendum, Pelican's Nest, 935-945 East John Street, Appleton, WI 54911, October 12, 2018, DNR BRRTS Number 02-45-530084, OMNNI Project Number M1445E18* (the "SMP-Addendum"), for approval under Wis. Adm. Code § NR 718.12, to allow disposal of excavated contaminated soil at a location other than that from which it was excavated. The SMP-Addendum was submitted by OMNNI Associates, Inc. ("OMNNI") on behalf of Iconica, Inc. (Iconica). In addition, the DNR received a \$700 "other technical assistance" fee for providing review and response to the SMP-Addendum, in accordance with Wis. Adm. Code § NR 749.04(1).

OMNNI provided an electronic update on January 8, 2019 that the two proposed buildings for the Pelican's Nest will be addressed as 975 and 980 East John Street per the City of Appleton in lieu of the proposed 935 and 945 East John Street. OMNNI also provided an electronic update on January 11, 2019 with a more specific Cut/Fill map for the area outside a "development zone" established in 2014.

Abbreviated History of Property and DNR Cases

The approximately 8-acre property was addressed as 935 East John Street, Appleton, Outagamie County, Wisconsin (the "Property") and owned by Foremost Farms USA (FFUSA) when the site-wide Environmental Repair Program (ERP) case, BRRTS #02-45-530084, opened in 2004 for site-wide contamination. FFUSA entered the site into the Voluntary Party Liability Exemption (VPLE) Program under Wis. Stats. § 292.15 in 2004 with BRRTS #06-45-523605.

Following investigation of the contamination by FFUSA, the City of Appleton purchased the Property on June 28, 2011 and transferred the Property to the Redevelopment Authority of the City of Appleton (the "Redevelopment Authority") on November 8, 2011. The Redevelopment Authority applied for the VPLE Program and continued BRRTS #06-45-523605. The Property was surveyed as Lot 1 of Certified Survey Map (CSM) 6728, recorded on October 30, 2013 (parcel number 311077200). The Redevelopment Authority completed significant modifications to the Property to prepare for redevelopment, including but not limited to: 1) demolition of the former FFUSA building, 2) filling of the head race, and 3) creation of a "development zone". Following these actions, the ERP case, BRRTS

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#02-45-530084, closed on May 16, 2014 under Wis. Adm. Code chs. NR 726 and 727 with a site-wide *Cap Maintenance Plan and Materials Handling Plan* dated February 2014. A certificate of completion was issued for the Property under the VPLE Program on June 26, 2014 for BRRTS #06-45-523605. On December 16, 2016, the DNR issued the following regarding the proposed Eagle Point Senior Living Campus with an anticipated address of 935 East John Street:

- *Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed, Foremost Farms (Former), 935 E. John St., Appleton, Outagamie County, Wisconsin*, (BRRTS #07-45-552735), and
- *Conditional Approval for On-Site Management of Contaminated Soil under s. NR 718.12, Wis. Adm. Code and Conditional Approval of Plans for Post Closure Modification under s. NR 727.07, Wis. Adm. Code*, (BRRTS #02-45-530084).

The Property was surveyed and split into Lots 1, 2 and 3 under CSM 7281, recorded on November 11, 2016 and transferred in 2017 as follows:

- Lot 1 of CSM 7281, 5.95 acres, parcel number 311077200 – owned by ASHRE, LLC
- Lot 2 of CSM 7281, 1.77 acres, parcel number 311077201 – owned by EP Development, Inc. (to be sold to Pelican's Nest, LLC)
- Lot 3 of CSM 7281, 0.51 acres, parcel number 311077202 – owned by EP Development, Inc.

While CSM 7281 was recorded prior to issuance of the December 16, 2016 letters, the letters did not include discussion of CSM 7281 or the three Lots.

Construction of the Eagle Point Senior Living Campus began in 2017 as phase 1 of the redevelopment. Since construction of the Eagle Point Senior Living facility on Lot 1 of CSM 7281, the City of Appleton assigned an address of 955 East John Street to the building (in lieu of retaining 935 East John Street as anticipated).

During phase 1 of the redevelopment, movement of clean soil took place from Lot 1 to Lot 2 as follows:

- 966 cubic yards (cy) of clean topsoil (2014 cap) was excavated from Lot 1 and stockpiled on Lot 2;
- 247 cy of clean clay (2014 cap) was excavated from within the “development zone” on Lot 1 and stockpiled on Lot 2; and
- A calculated 3,874 cy of clean clay (2014 cap) was excavated from within the “development zone” on Lot 1 and spread across Lot 2 to raise the grade.

Construction of the campus, submittal of a Construction Documentation Report and submittal of a revised Cap Maintenance Plan was intended to be completed prior to initiation of the second phase of the redevelopment. However, phase 2 of the redevelopment, Pelican's Nest, is ready to move forward. As a result, DNR allowed submittal of the SMP-Addendum. DNR further clarified that the *Conditional Case-by-Case Grant of Exemption for the Development of a Property Where Solid Waste has been Disposed* (BRRTS #07-45-552735) and *Conditional Approval of Plans for Post Closure Modification under s. NR 727.07, Wis. Adm. Code* (BRRTS #02-45-530084) issued December 16, 2016 for the Property did not require amendment to incorporate the Pelican's Nest development.

Summary of proposed soil management activities

Iconica proposes to disturb more of the direct contact soil caps previously approved for the Property by the DNR on May 16, 2014. As part of this effort, Iconica proposes the following actions:

1. 525 cy of 966 cy of topsoil excavated from Lot 1 during phase 1 of the redevelopment will be used to create a six-inch cap in greenspace areas on Lot 2;

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2. The remaining 441 cy of the 966 cy of topsoil from Lot 1 will be moved and temporarily stockpiled on Lot 3 for phase 3 of the redevelopment;
3. 247 cy of clean clay excavated from within the “development zone” on Lot 1 during phase 1 of the redevelopment, currently stockpiled on Lot 2, will be voluntarily tested for polycyclic aromatic hydrocarbons (PAHs) and Resource Conservation and Recovery Act (RCRA) metals and disposed off-site once confirmed it is “exempt” (Reference the fact sheet, *Exempt Soil Management*, [RR-103](#));
4. 500-600 cy of clean clay excavated from within the “development zone” on Lot 2 during phase 2 of the redevelopment will be voluntarily tested for PAHs and RCRA metals and disposed off-site once confirmed it is “exempt” (Reference the fact sheet, *Exempt Soil Management*, [RR-103](#));
5. Contaminated soil will be excavated for building construction and regraded to move contaminated soil to other locations on the Property. This includes an estimated 620 cy of contaminated material. Iconica proposes to dispose of this material during redevelopment of the Property in accordance with Wis. Adm. Code § NR 718.12 which exempts the facility from solid waste requirements in Wis. Stats. ch. 289 and Wis. Adm. Code chs. NR 500 to 538.

Proposed phase 2 redevelopment activities are limited to Lot 2 of CSM 7281 and include installation of infrastructure, site grading and development of Pelican’s Nest. Per the SMP-Addendum, the Pelican’s Nest is proposed to include, “...two, five-unit town house style apartment buildings...” with attached garages, asphalt drives and paths, concrete sidewalks and three biofilters. The buildings will include infrastructure for a future radon mitigation system. The SMP-Addendum states the addresses of the two buildings are proposed to be 935 and 945 East John Street. However, since submittal of the SMP-Addendum, the City of Appleton confirmed the two buildings will be addressed as 975 and 980 East John Street.

Contaminated soil is proposed to be capped with paved surfaces, a building or a minimum soil cap of six inches of clean soil and vegetation. The February 2014 *Cap Maintenance Plan and Material Handling Plan* is proposed to be revised following completion of both the Eagle Point Senior Living complex and Pelican’s Nest and prior to any future development phases.

Boundaries for Lots 1, 2 and 3 of CSM 7281, the Eagle Point Senior Living building, proposed campus layout and proposed Pelican’s Nest layout can be found on *Figure No. 11, Pelican’s Nest Development / Soil Handling*, 10/12/2018 by OMNNI. The Eagle Point Senior Living Campus proposed layout is included for reference on *Figure No. 3, Eagle Point Senior Living Site Detail Map*, 10/20/2016 by OMNNI.

Location standards: Wis. Adm. Code § NR 718.12 (1)(c)

Information provided in the SMP-Addendum indicates that disposal of the contaminated soil complies with the locational criteria of s. NR 718.12(1)(c), Wis. Adm. Code so that soil will not be placed or replaced in the following areas:

- Within a floodplain;
- Within 100 feet of a wetland or critical habitat area;
- Within 100 feet of any on-site water supply well or 300 feet of any off-site water supply well;
- Within 3 feet of the high groundwater level;
- At a depth greater than the depth of the original excavation from which the contaminated soil was removed; and
- Where the contaminated soil poses a threat to public health, safety or welfare or the environment.

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Grant of exemption to Wis. Adm. Code § NR 718.12(1)(c)3

In consideration of Property dimensions (between 50 and 300 feet wide), topography, waterfront location on the Fox River and proposed capping of contaminated soil, the DNR grants an exemption to the location criteria of Wis. Adm. Code § NR 718.12(1)(c)3 and will allow placement of contaminated soil within 300 feet of a navigable river, stream, lake, pond, or flowage.

Soil Characterization

Soil proposed for excavation from the Property is primarily contaminated with polycyclic aromatic hydrocarbons (PAHs) and metals with some minor volatile organic compounds (VOCs). Based on historical site-wide soil sampling at the Property during investigation under BRRTS #02-45-530084 and identification of impacted soil fill site-wide, the DNR concurs that the material has been adequately characterized per Wis. Adm. Code § NR 718.12(1)(e).

Wis. Adm. Code § NR 718.12 Conditional Approval

Based on review of the NR 718.12 exemption request/soil management plan, and the requirements of NR 718.12, the DNR approves of disturbance of the existing soil cover, relocation of an estimated 620 cy of contaminated soil on the Property from which it is excavated and construction of new covers.

Approval is conditioned upon compliance with the following:

1. Lead-bearing painted concrete previously disposed within the footprint of the former FFUSA building and excavated for the purpose of this redevelopment must be properly disposed at a licensed landfill and may not be reused on site unless a separate detailed written request is submitted to the DNR and written approval granted in advance of disposal. The lead-bearing painted concrete was disposed along the eastern face of the western wall within the former FFUSA building basement foundation and is covered with a geotextile marker and between four and ten feet of clean clay. Reference the May 16, 2014 *Final Case Closure with Continuing Obligations* letter for additional information.
2. Contaminated soil previously disposed within the footprint of the former FFUSA building and excavated for the purpose of this redevelopment must be properly disposed at a licensed landfill and may not be reused on site unless the following takes place:
 - a. The soil is temporarily stockpiled in accordance with Wis. Adm. Code § NR 718.05(2);
 - b. The soil is characterized in accordance with Wis. Adm. Code § NR 718.12(1)(e); and
 - c. A separate detailed written request is submitted to the DNR and written approval granted in advance of on-site reuse.

The contaminated soil (identified in Table 2 of the SMP-Addendum) was disposed within the former FFUSA building basement foundation and is covered with a geotextile marker and between four and ten feet of clean clay. Reference the May 16, 2014 *Final Case Closure with Continuing Obligations* letter for additional information.

3. Any geotextile marker encountered must be repaired or replaced prior to construction or backfilling with clean soil above the geotextile.
4. On-site management of excavated soil shall be completed within one year of the effective date of this letter unless a written extension of this condition is obtained from the DNR.

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5. Iconica shall manage excavated material in conformance with the approved SMP-Addendum and shall notify the DNR within 24 hours of discovering material that is not consistent with the contaminant characteristics that have been reported to the DNR. The material must be segregated and tested to determine appropriate disposal.
6. Iconica shall not relocate more than 620 cy of excavated contaminated soil unless written approval is granted by DNR.
7. Iconica is responsible for obtaining any local, federal, or other applicable state permits to carry out the project.
8. Iconica shall submit to the DNR, documentation of excavation, disposal and regrading activities of both the Eagle Point Senior Living Campus and Pelican's Nest within 60 days of completing the activities. The report shall include description of total volume, placement location map and geographic position (determined in accordance with the requirements of Wis. Adm. Code § NR 716.15(5)(d)). No additional fees are required at the time of this submittal.
9. Iconica shall comply with applicable requirements of Wis. Adm. Code § NR 718.12(2)(d) and (e) and NR 727.09 regarding continuing obligations and submit three individual revised *Cap Maintenance Plans and Material Handling Plans* specific for each lot of CSM 7281 within 60 days of construction completion for DNR review and approval. No additional fees are required at the time of this submittal.

The DNR reserves the right to require the submittal of additional information or to modify or revoke this soil management approval if Iconica fails to comply with the requirements of the proposed SMP-Addendum. The DNR also retains its right to modify or revoke this approval if circumstances or conditions change, or if new information is found which would warrant modification or revocation of this approval.

If you have any questions regarding this approval decision, please contact me in Oshkosh by phone at 920-424-7887 or by email at jennifer.borski@wisconsin.gov.

Sincerely,



Jennifer Borski

Hydrogeologist, Remediation & Redevelopment Program

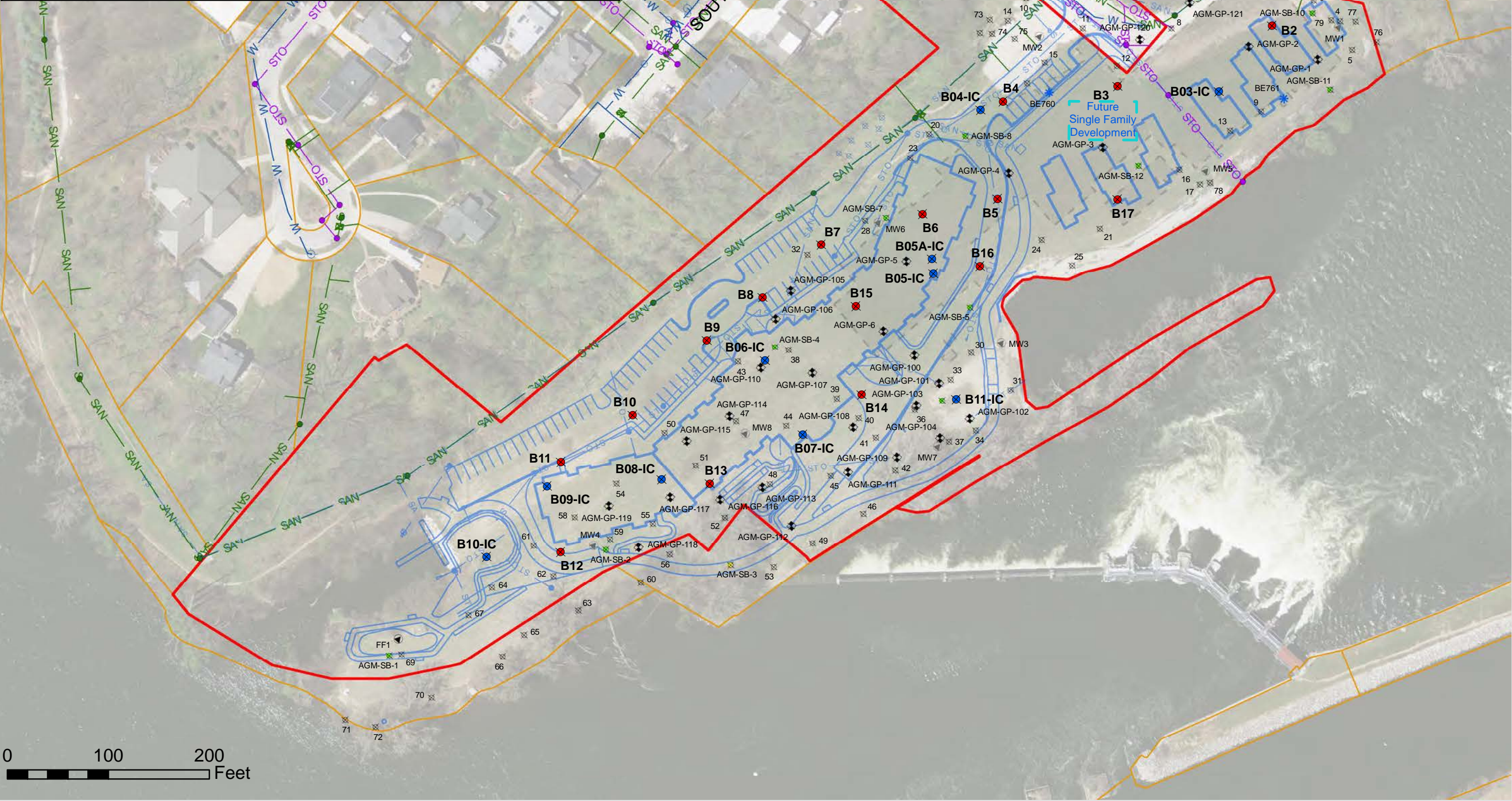
Attachments:

Figure No. 3, Eagle Point Senior Living Site Detail Map, 10/20/2016 by OMNNI

Figure No. 11, Pelican's Nest Development / Soil Handling, 10/12/2018 by OMNNI

cc: Patrick Eagan, Iconica, Inc. – patrick.eagan@iconicacreates.com
Karen Harkness, City of Appleton – karen.harkness@appleton.org
Paula Vandehey, City of Appleton – paula.vandehey@appleton.org
Brian Wayner, OMNNI Associates – brian.wayner@omnni.com
Roxanne Chronert, NER RR Team Supervisor, Green Bay – roxanne.chronert@wisconsin.gov

Site	Historical Boring Locations (approx)	Former Building Extents (approx)
Parcels	Soil Boring	Soil Boring Locations (6/2016)
W Water Main	Geotechnical Boring	Soil Boring Locations (10/2014)
S Sanitary Sewer	Geotechnical/Environmental Boring	Soil Borings Locations (2/2013)
S Storm Sewer	Geoprobe Environmental Boring	
	Historical Well Locations (approx)	
	Abandoned Monitoring Well	
	Active Monitoring Well	
	Abandoned Water Well	



Project Manager: BDW
 Project Engineer: BDW
 Drawn By: JCW
 Checked By: BDW
 Date: 10/20/2016

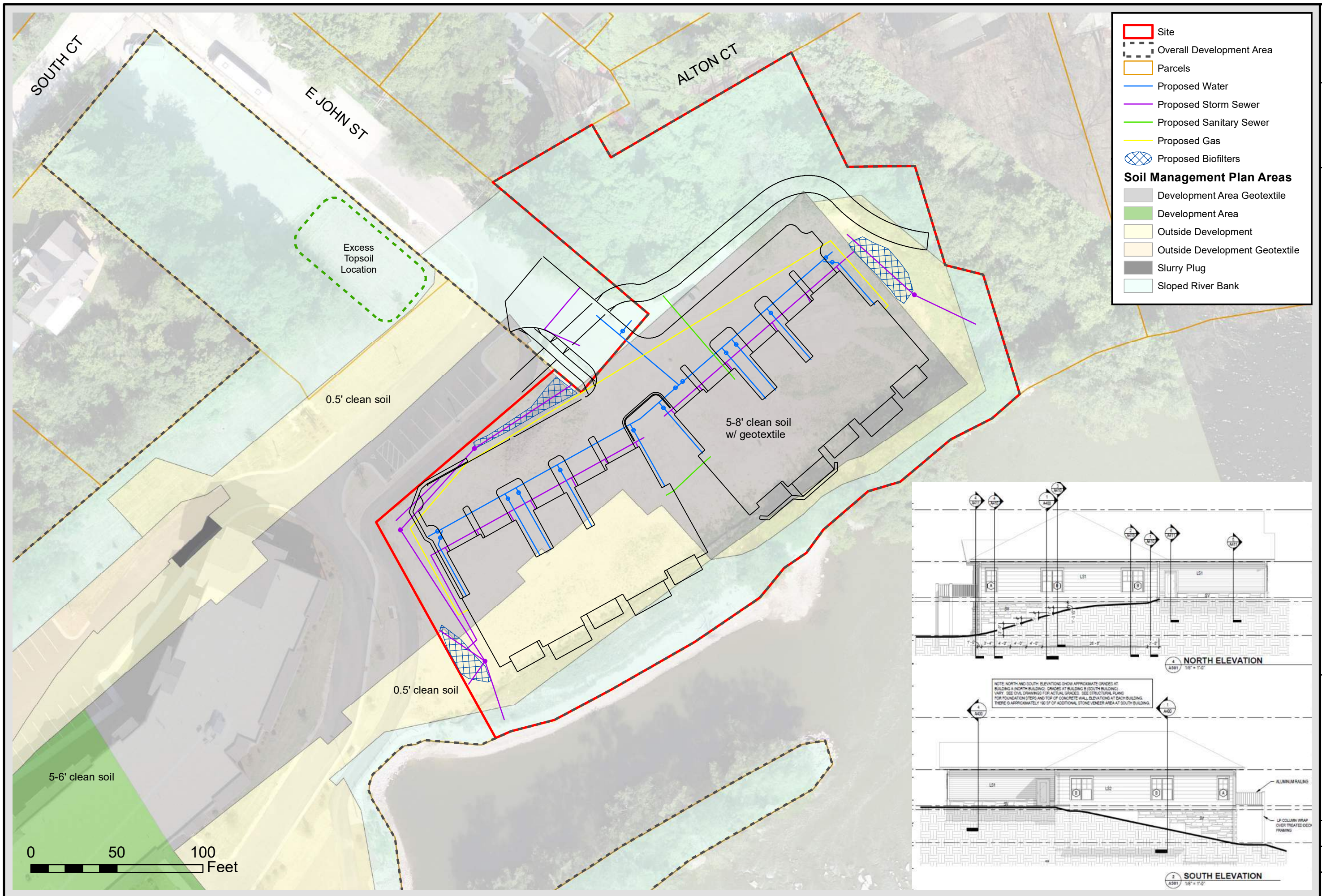
**EAGLE POINT SENIOR LIVING
 SITE DETAIL MAP**

CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN



SCALE:
 1" = 100'
 PROJECT NO.
M1445C16
 FIGURE NO.
3

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Legend

- Site
- Overall Development Area
- Parcels
- Proposed Water
- Proposed Storm Sewer
- Proposed Sanitary Sewer
- Proposed Gas
- Proposed Biofilters

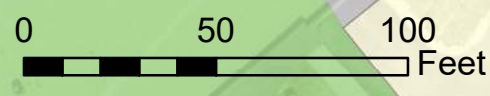
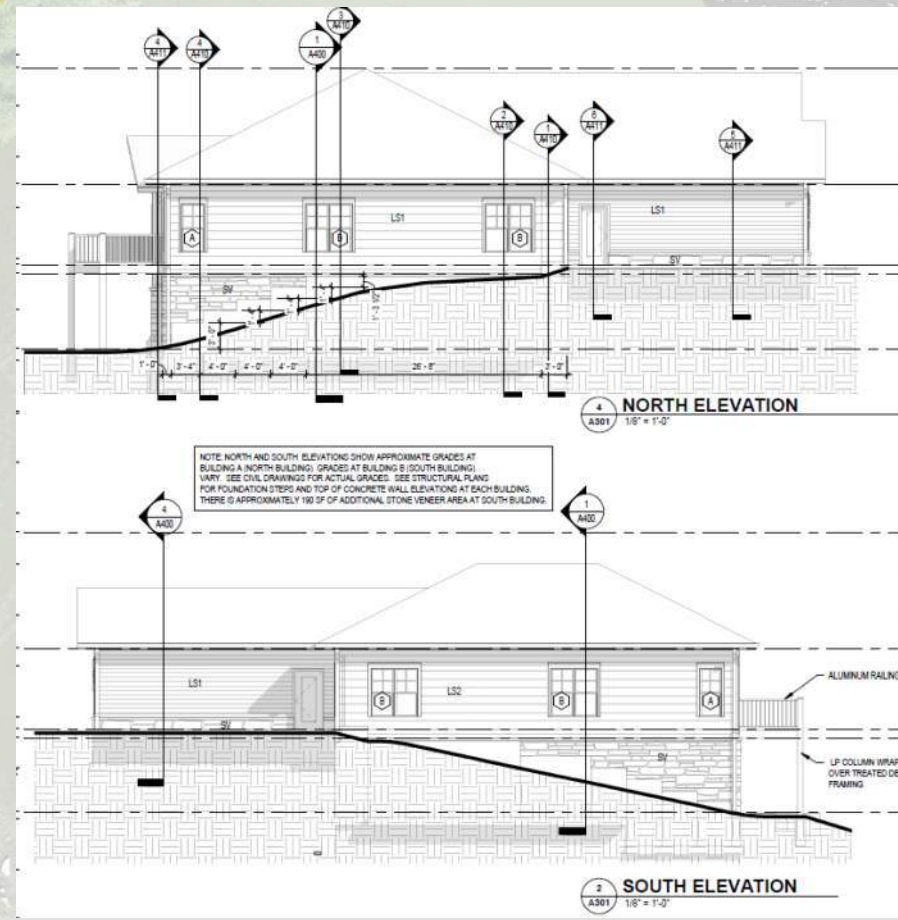
Soil Management Plan Areas

- Development Area Geotextile
- Development Area
- Outside Development
- Outside Development Geotextile
- Slurry Plug
- Sloped River Bank

Project Manager: JCW
 Drawn By: BDW
 Checked By: BDW
 Date: 10/12/2018

**PELICAN'S NEST
 DEVELOPMENT / SOIL HANDLING**

CITY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN



Omni ASSOCIATES
 ONE SYSTEMS DRIVE PHONE (920) 735-6900
 APPLETON, WI 54914 FAX (920) 830-6100
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SCALE:
 1" = 50'
 PROJECT NO.
M1445E18
 FIGURE NO.
11