

Assenza, Adam

From: Brown, Sandra <Sandra.Brown@thompsonhine.com>
Sent: Monday, July 02, 2018 1:27 PM
To: Gosselin, Danielle; Assenza, Adam
Cc: Rutson, Vicki
Subject: RE: Moses Lake
Attachments: Allyson Brooks_ PhD.vcf; NCBRP Seg 1 and 2 revised alignment 2017.pdf
Categories: FOR ECT

Danielle and Adam,

As you know FRA has approved of the modified APE we proposed. I am attaching here the material we provided to FRA and STB for the modified APE. The materials have been combined into one PDF rather than the individual pieces to make it easier to follow. I have also attached the contact card for the Washington SHPO. Here is also a link to the WA SHPO staff page if you want to know more about Allyson:

<https://dahp.wa.gov/about-us/staff-directory>

I understand that you are waiting for a letter from FRA regarding the STB taking the lead on SHPO. It is our hope that the STB could send its letter to SHPO as soon as possible to get SHPO's concurrence on the modify APE so we can get boots on the ground.

Please let me know if you have any questions or need anything else from us. Thank you.

Regards, Sandy

Sandra L. Brown | Partner | **Thompson Hine LLP**
 1919 M Street, N.W., Suite 700 | Washington, DC 20036-1600
O: 202.263.4101 | **M:** 202.841.0067
F: 202.331.8330 | www.ThompsonHine.com
Sandy.Brown@ThompsonHine.com

Ranked a top-tier firm nationally for transportation law by *Chambers USA: America's Leading Lawyers for Business* and by U.S. News Media Group/Best Lawyers.



A Smarter Way to Work – predictable, efficient and aligned with client goals. [Read more.](#)

Atlanta | Cincinnati | Cleveland | Columbus | Dayton | New York | Washington, D.C.



MEMORANDUM

April 6, 2018

TO: Victoria Rutson, Surface Transportation Board
Lydia Kachadoorian, Federal Railroad Administration

FROM: Sandy Brown
David Benz

CC: Jeannie Beckett

RE: Area of Potential Effects for Section 106 Analysis of Modifications to the Northern Columbia Basin Railroad Project

This memorandum describes the proposed area of potential effects (“APE”) for the Section 106 analysis of the modifications to the Northern Columbia Basin Railroad Project (“NCBRP”), which involves construction and rehabilitation of rail lines in and near the city of Moses Lake, Washington.

I. Background.

The Port of Moses Lake (“Port”) obtained authorization from the Surface Transportation Board (“STB”) in 2009 to construct two new short segments of rail line and acquire a third segment of rail line in order to develop an 11-mile rail corridor in the northern and eastern parts of the city.¹ The purpose of this rail project, known as the NCBRP, is to provide rail service to land designated for industrial development along Wheeler Road and in the industrial area adjacent to the Grant County International Airport (“GCIA”). Additionally, the project will allow rail traffic to and from the GCIA industrial area to avoid passing through downtown Moses Lake.

The NCBRP has three segments. See Exhibit 6.1 of Final Environmental Assessment, dated May 2009 (provided with this memo) Segment 1 involves construction of approximately 4.5 miles of new track from a connection with a rail line of the Columbia Basin Railroad Company, Inc. (“CBRW”) in the Wheeler neighborhood on the east side of Moses Lake to a connection with a different rail line of CBRW just west of the Parker Horn (Crab Creek) water crossing. Segment 2 involves construction of approximately 3.1 miles of new track from the existing CBRW line to the eastern side of the GCIA. Segment 3 involves acquisition and rehabilitation of approximately 3 miles of CBRW track that connects Segments 1 and 2.

¹ Port of Moses Lake – Construction Exemption – Moses Lake, Washington, STB Docket No. 34936 (served Aug. 27, 2009).

April 6, 2018

Page 2

The construction, acquisition, and operation of common carrier rail lines must be authorized by the STB pursuant to 49 USC § 10901; the STB determination of whether to grant the requested authorization constitutes a federal “undertaking” for the purposes of the National Historic Preservation Act.² The Washington State Department of Transportation (“WSDOT”) jointly conducted the environmental and historic review for the NCBRP with the STB’s Office of Environmental Analysis.³

As part of its authorization decision, the STB directed the Port to comply with the terms of a Programmatic Agreement (“PA”) entered among the Port, the STB, and the Washington Department of Archaeology and Historic Preservation (“WSHPO”).⁴ WSDOT and CBRW were consulting parties to the PA. The Advisory Council on Historic Preservation (“ACHP”) was invited to participate in the PA but declined the invitation. The PA has a maximum term of ten (10) years (until August 27, 2019), but it can be amended or modified upon agreement of all signatory parties.⁵

In the cultural resources review, the STB and WSDOT utilized an APE of 100-feet wide, meaning 50 feet from the centerline of the rail corridor.⁶ As stated in the Preliminary Environmental Assessment, “[t]his 100-foot-wide corridor allows a buffer between the track itself and adjacent uses, and takes into consideration the possibility of noise and vibration issues

² See, e.g., 54 USC §§ 300320(3) and 306108. Furthermore, the STB determination also constitutes a “major federal action” for purposes of the National Environmental Policy Act. See 42 USC § 4332(2)(C).

³ Formerly known as the Section of Environmental Analysis.

⁴ See Port of Moses Lake, STB Docket No. 34936, slip op. at 9 and Appendix B (served Aug. 27, 2009). As noted in the PA, the Port was not able to obtain access to certain parcels during the APE study. The PA addressed these parcels and any future expansion needed of the APE in Section II of the PA which sets out the process by which any additional APE work would be completed. The Port will continue to comply with this provision of the PA if parcels are still inaccessible or the APE needs further expansion in the future.

⁵ See Programmatic Agreement at Sections VII and X. The Port will be seeking an extension of the PA terms.

⁶ See, e.g., Preliminary Environmental Assessment at page 4-4 (November 2008). Other environmental resources were studied at varied distances such as 0.25 miles from the centerline for air quality and 300 feet from the centerline for wetlands. See e.g. Preliminary EA 4-2 and 4-43.

April 6, 2018

Page 3

with regard to historic buildings or structures.”⁷ The WSHPO agreed with the use of a 100-foot wide APE.⁸

II. Modifications to the NCBRP.

The Port is now preparing to implement the NCBRP authorized by the STB, but the Port would like to make some minor modifications in order to reduce the impact of the rail line construction and operation while also increasing the effectiveness of the rail line as a form of transportation. The modifications proposed by the Port are as follows:

- an 86-foot southward shift of the rail line at the east end of Segment 1, south of Wheeler Road, in order to avoid the Grant County Public Works facility
- addition of new curves near where Segment 1 crosses Wheeler Road in order to make the crossing perpendicular and avoid newly-constructed buildings along Hamilton Road NE
- a slightly more western alignment of Segment 1 between Hamilton Road NE and Broadway, thus minimizing impacts on a wetland area
- a straighter alignment of Segment 2 just northeast of the connection with the CBRW line, thereby slightly reducing the necessary track construction
- a shorter, straighter alignment at the end of Segment 2 in order to better reach existing and future development areas, as well as reduce the necessary track construction

See Exhibit A and B and note sheet. As a result of these modifications, the Port has been in contact with the STB regarding making the necessary revisions to the previously-completed Environmental Assessment. Additionally, the Port is seeking funds from the Federal Railroad Administration (“FRA”) to implement the NCBRP, thus involving the FRA in the environmental and cultural resources review process.

III. Proposed APE.

A. APE Overview.

Pursuant to applicable ACHP regulations, the APE is described as “the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist.” 36 CFR § 800.16(d). A historic property is “any prehistoric or historic district, site, building, structure, or object included in, or eligible for

⁷ Preliminary EA at page 4-4.

⁸ See correspondence from Matthew Sterner, Transportation Archaeologist for State of Washington, to Christa Dean, Surface Transportation Board (October 31, 2007), found at Appendix A of the Preliminary Environmental Assessment (November 2008).

April 6, 2018

Page 4

inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior.” 36 CFR § 800.16(l)(1). Determination of the appropriate APE is based on assessment of the potential direct construction effects from a project, and also indirect effects such as noise, vibration, and visual impacts. The effects will be different for above-ground resources (buildings, historic districts, etc.) than for underground resources like archaeological artifacts.

B. Work Associated with the NCBRP.

The work associated with the NCBRP includes construction of new railroad track in Segments 1 and 2, including a rail crossing of the Crab Creek waterway, and rehabilitation of the CBRW rail line in Segment 3. The new track in Segments 1 and 2 would be constructed in a 100-foot wide right-of-way (“ROW”). To construct new track, existing vegetation would be removed and a new subgrade would be constructed. Some grading and excavation would be necessary for Segments 1 and 2, but all earthwork would be contained within the ROW. Fill materials would be hauled from one area to another within the project limits. Subballast and ballast would be imported to the site and placed on the subgrade. Ties, rail, rail fasteners, and other track material would be placed on the ballast.⁹ The bridge over Crab Creek would consist of approximately eleven (11) spans of 35 to 47 feet each, with ten (10) piers in the floodplain. Only four (4) piers would be in the active channel of Crab Creek. Stormwater falling on the bridge would be contained within the bridge and conveyed to ditches on either side of Crab Creek.

In addition, modifications of Segment 1 will include some additions to the APE. The first, is related to the closure of one private driveway (Park Drive) requiring the construction of a short road connecting the closed driveway to an existing driveway (Park Drive 2). This connection will be constructed within a 300’ x 550’ construction area. See Exhibit C.¹⁰ This will be added to the modified APE. The work in Segment 1 will also include the extension of Silva Street to maintain local access. The APE for this area is shown in Exhibit D.

During the prior project study, the NCBRP was envisioned to have a 120-foot ROW for a small portion of Segment 1.¹¹ This additional ROW was needed for cut in a hillside to accommodate the alignment and will be needed as a result of the modifications. This area now includes an expanded 160-foot APE in the middle section of this portion. These transitions are shown in Exhibit D and E. Furthermore, the modification in Segment 1 will include grading for agricultural rail crossings. The approaches to these crossings are shown on Exhibits C and D.

⁹ See, generally, Preliminary EA at pages 3-12 to 3-13.

¹⁰ See also, two Key Maps that show an overview of Segment 1 and Segment 2 modifications.

¹¹ Preliminary EA at page 3-4.

April 6, 2018

Page 5

The work on Segment 3 “would primarily consist of replacing rails, ties, and other track materials” though upgrades to the two signalized crossings, at Stratford Road and Loring Drive, would also occur.¹² Once the project is completed, it is expected that rail traffic on the NCBRP will consist of one round-trip train per day, with approximately ten (10) cars per train.¹³

C. APE for Above-Ground Resources.

Generally, an APE of 100 feet in width is proposed for above-ground resources, except that, the Port is proposing to extend the APE to 180 feet in width for the study area around the bridge at Crab Creek and the Columbia Basin East Low Canal System. See Exhibit D and E. In addition, the Port is adding laydown or temporary staging areas to the APE study area. See Exhibit B and Exhibit F. As a result the proposed APE would generally be defined as 50 feet on either side of the centerline of the proposed or existing rail line with certain areas extending from 90 to 120 feet on either side of the centerline.. This is an expanded APE form the one utilized in the 2009 Environmental Assessment jointly prepared by the STB and WSDOT.¹⁴

No prehistoric archaeological sites or traditional cultural properties were found in the area during the analysis conducted as part of the EA.¹⁵ Twenty potential historic resources were identified, but only one of those resources, the Columbia Basin East Low Canal Feeder Canals system, was determined to be eligible for listing on the National Register of Historic Places.¹⁶ The NCBRP will cross over these canals via culverts near where Wheeler Road itself already crosses them. The canals are utilitarian structures consisting primarily of earthen ditches. Construction and use of culverts will have some minor direct visual impact to a localized section of the canals, but will not harm or detract from the canal system’s importance in local history as an irrigation project developed in the mid-20th century. Furthermore, as noted above, a widened APE will be studied in this area of _180__ feet in width.

A 100-foot wide to 180-foot wide APE “allows a buffer between the track itself and adjacent uses, and takes into consideration the possibility of noise and vibration issues with regard to historic buildings or structures.”¹⁷ The majority of the land in the study area is zoned for industrial uses, but much of it is currently used for agriculture.¹⁸ Railroad track generally has a

¹² Preliminary EA at page 3-12.

¹³ Final EA at page ES-7 (May 2009).

¹⁴ Preliminary EA at page 4-4.

¹⁵ Preliminary EA at pages 4-5 and 5-4.

¹⁶ Preliminary EA at page 4-5.

¹⁷ Preliminary EA at page 4-4.

¹⁸ Preliminary EA at page 4-21.

April 6, 2018

Page 6

low profile on the landscape, such that it is not easily visible except in areas where significant fill is placed to create an elevated embankment. For the most part, the new track of the NCBRP will not be placed on a significant embankment. Instead, the track will mostly have a low profile on the landscape, with minimal direct visual effects. Moreover, the new track to be constructed in Segment 1 will be parallel to Wheeler Road for much of its length and then will pass industrial buildings along Hamilton Road NE. Wheeler Road is a major thoroughfare in Moses Lake. The proximity of automobile traffic on Wheeler Road, in addition to the recently-constructed industrial buildings along Hamilton Road NE, indicates that the new rail line in Segment 1 will not have a marked direct or indirect impact even when trains are running over it. Noise and vibration already exists in the area of Wheeler Road due to the automobile and truck traffic thereon.

Segment 1 will include a bridge over Crab Creek, and this bridge will have some direct visual impact in the area. However, the immediate area around the bridge is primarily agricultural or pasture land, with few opportunities for the public to see the bridge. The NCBRP bridge will not be the first crossing of Crab Creek in the area, as there is also a highway bridge for Route 17 to the south. Finally, Crab Creek is in a slight depression of the local landscape, meaning that the impacts of the NCBRP will not be pronounced, especially given the relatively isolated area. Nevertheless, the Port proposes to expand the APE to 180-foot width for the Crab Creek crossing study area.

Temporary impacts will occur during the construction process for Segment 1. As described above, Segment 1 is located primarily along an important local road (Wheeler Road) or in an isolated area where few viewpoints are possible. Noise and vibration impacts will also be minimal due to the proximity of Wheeler Road and the relative isolation of the rest of Segment 1.

The construction for Segment 2 will occur in the immediate vicinity of the GCIA, which is surrounded by runways, industrial buildings, airport hangars, other airport buildings, and roads. The addition of a rail line to the local environment is not expected to have a negative direct visual impact on an area that is currently populated by utilitarian buildings and structures of relatively recent vintage. Additionally, the new construction for Segment 2 will primarily be immediately adjacent to, and parallel to, Randolph Road. The co-location of the rail line near a road serving the industrial areas of the airport also suggests that the direct and indirect impacts of the rail line will be minimal, even when trains are operating.

Again, some temporary impacts will occur during the construction process for Segment 2, but this impact is expected to be minor given the surrounding land uses in the GCIA area. Noise and vibration impacts will also be minimal due to the proximity of Randolph Road and the airport-related noise and vibration that already exists in the area.

April 6, 2018

Page 7

Segment 3 will involve rehabilitation of a currently-existing rail line. Rehabilitation will entail temporary direct and indirect impacts, but these impacts are expected to be minor because the rail line is an existing part of the landscape with occasional rail service.

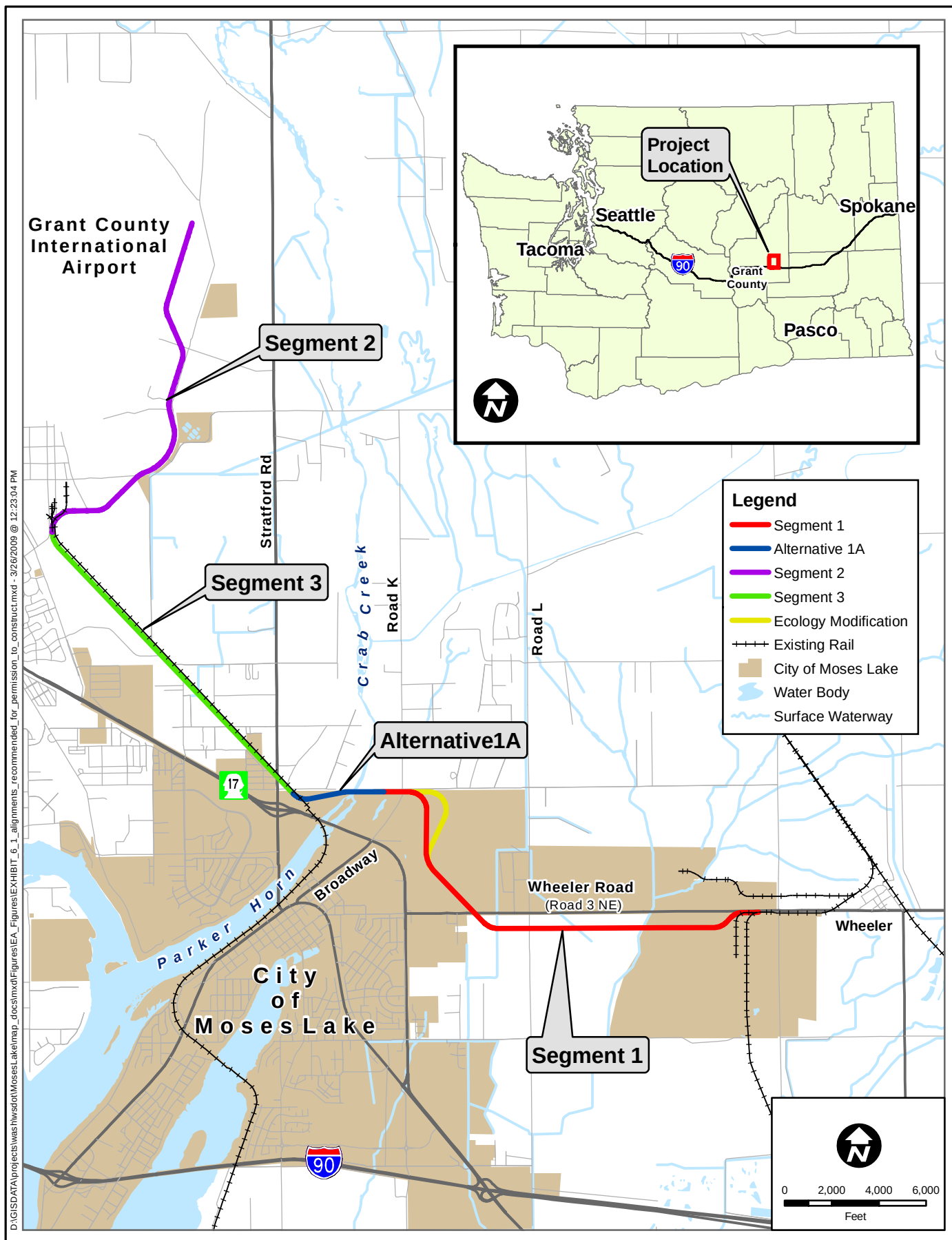
D. APE for Below-Ground Resources.

An APE for below-ground resources is proposed to be the substantially the same as the APE proposed for the above-ground resources. The proposed APE would be defined as 50 feet on either side of the centerline of the proposed or existing rail line with certain areas extending to a maximum of 90 feet on either side of the centerline. This is an expansion of the APE utilized in the 2009 Environmental Assessment jointly prepared by the STB and WSDOT.

The proposed APE is appropriate because no excavation outside the similarly-sized rail ROW is planned. Furthermore, no prehistoric archaeological sites or traditional cultural properties were identified within the APE for the original alignment.¹⁹ The STB, WSHPO, and the Port previously agreed upon protocols to follow in the event that historic resources are discovered during the construction of original Segments 1 and 2.²⁰ It is expected that the same or similar protocols could be utilized for the modifications proposed by the Port. Finally, no below-ground work is expected in Segment 3.

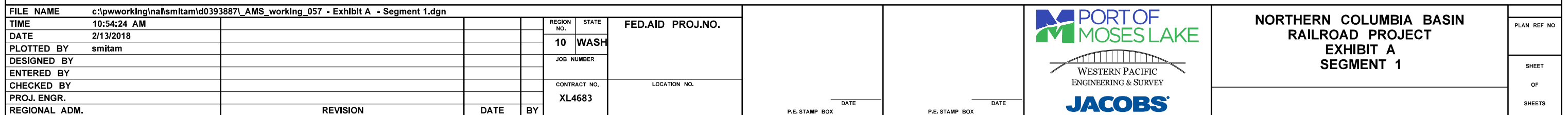
¹⁹ Preliminary EA at page 4-5.

²⁰ See Programmatic Agreement at Section VIII.

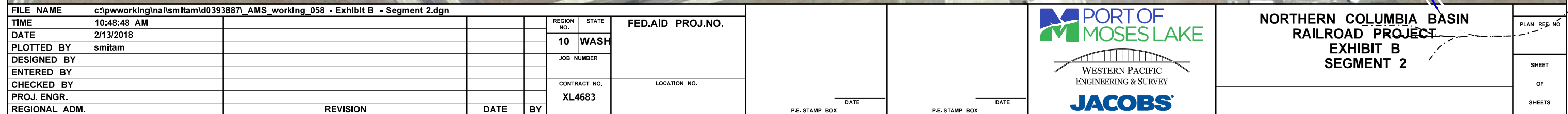


A horizontal scale bar with tick marks at 0, 750, and 1500. Below the bar is the text "SCALE IN FEET".

1. **X** SEE ATTACHED NOTES FOR THIS EXHIBIT.



1. **X** SEE ATTACHED NOTES FOR THIS EXHIBIT.



February 13, 2018

NOTES ON EXHIBIT A AND B

Exhibit A: General Notes:

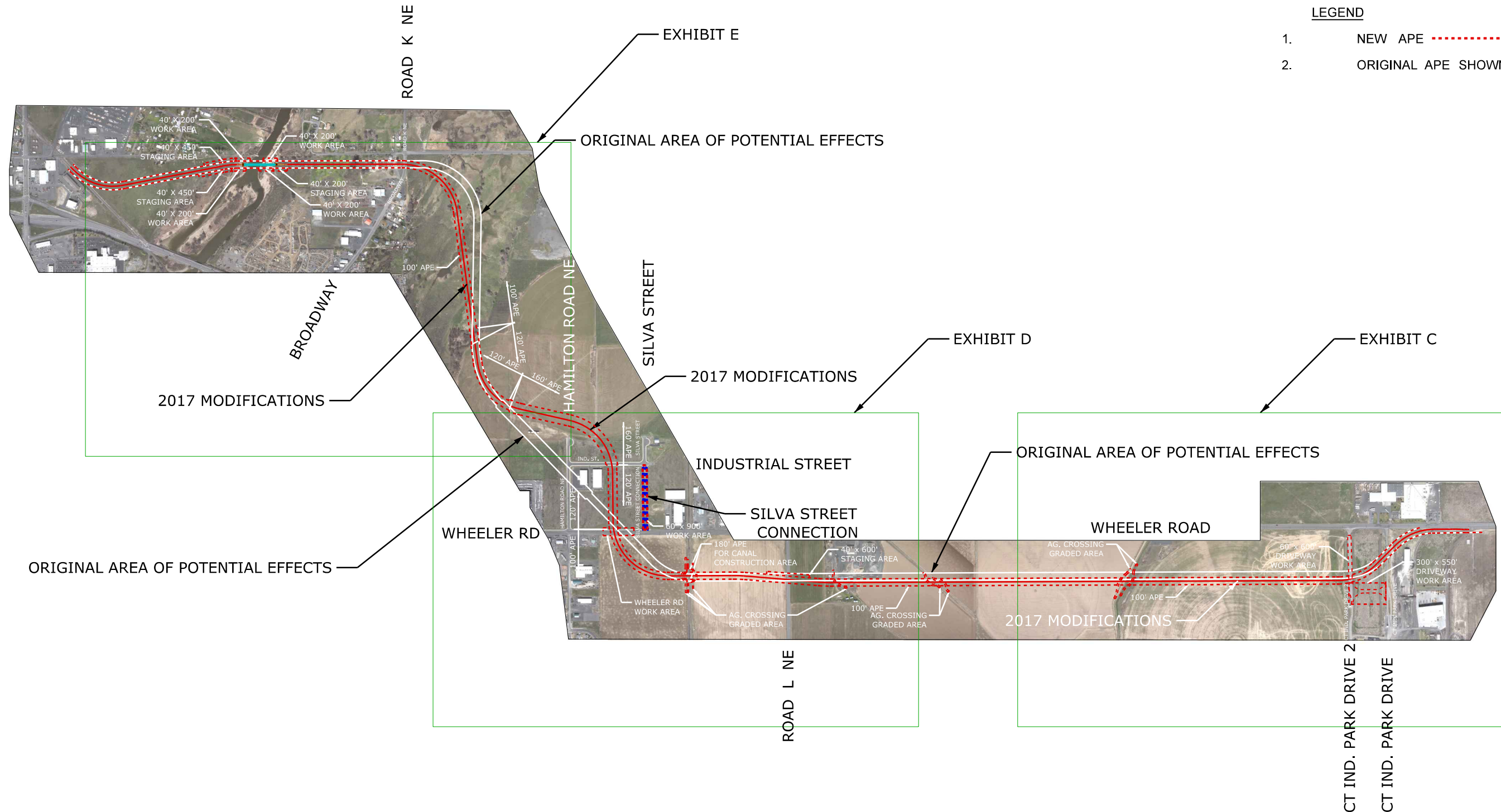
No.	Location	Alignment Alteration Information
①	Central Terminals	Central Terminals Park Drive to be closed. Due to the short distance along the driveway from Wheeler to proposed track there will not be room for vertical profile to climb the 12' needed to meet top of rail. In addition, this short distance could present queuing problems for trucks. Traffic using this easterly Park Drive will be routed to the westerly Park Drive 2. Park Drive 2 has already been constructed on a fill section that the rail profile can readily accommodate.
②	Public Works	Original alignment passed through Grant County Public Works facility and required removal of three buildings, fencing, and passed over a gas line. Alignment has been shifted 86' south to miss the facility and buildings.
③	Turner/Palmer	The new alignment is shifted to the north to miss irrigation pivot to provide minimal impact to irrigation system and maximize usability of crop land.
④	Hara/Wheeler Rd	The new alignment uses a sweeping curve to cross perpendicular to Wheeler. Perpendicular crossing is safer and minimizes property take along frontage of Wheeler. This perpendicular crossing avoids taking buildings adjacent to Hamilton.
⑤	Crittenden	Hamilton Road and the buildings adjacent to it did not exist during design of original alignment. The vertical profile is entering a steep cut after crossing Wheeler and would require taking one building and impact utilities and grades to the intersection at Hamilton Rd/Industrial St. A new rail crossing would be needed at Hamilton. The new alignment is proposed that will cut through Industrial Street which eliminates a rail crossing and impacts to utilities in Hamilton. After crossing Industrial Street the alignment moves back closer to the original alignment.
⑥	Silva Street Connection	A new connection from Silva Street to Wheeler is proposed. This will maintain access to industrial properties along Silva Street and provide a corridor for utilities that would be cut off when Industrial Street is bisected with the new rail alignment.
⑦	Crittenden North	The new alignment deviates to the west to minimize impacts to wetlands, avoid rock outcrops, and allows vertical profile to better follow existing ground.

Exhibit B: General Notes:

No.	Location	Alignment Alteration Information
①	Port of Moses Lake	New alignment is straightened to remove curve and shorten length of track construction.
②	Numerous Parcels	Alignment extension 2B better fits emergent rail shipping needs. Total length of alignment 2B is 2,700 feet less than original alignment.
③	Carlile	Industrial building now constructed on original alignment. New 2017 alignment will avoid building take.

0 750 1500
SCALE IN FEET

1. NEW APE
2. ORIGINAL APE SHOWN WHITE.



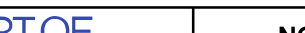
FILE NAME c:\pwworking\inalsm\itam\d0393887_AMS_working\ng_064 - FRA Exhlblt A - Segment 1.dgn										PORT OF MOSES LAKE WESTERN PACIFIC ENGINEERING & SURVEY JACOBS		NORTHERN COLUMBIA BASIN RAILROAD PROJECT KEYMAP SEGMENT 1		
TIME	11:06:28 AM			REGION NO.	STATE	FED.AID PROJ.NO.								PLAN REF NO
DATE	4/11/2018			10	WASH									
PLOTTED BY	smitam			JOB NUMBER										SHEET
DESIGNED BY														OF
ENTERED BY														SHEETS
CHECKED BY				CONTRACT NO.		LOCATION NO.								
PROJ. ENGR.				XL4683				P.E. STAMP BOX DATE		P.E. STAMP BOX DATE				
REGIONAL ADM.		REVISION	DATE	BY										

0 200 400

SCALE IN FEET

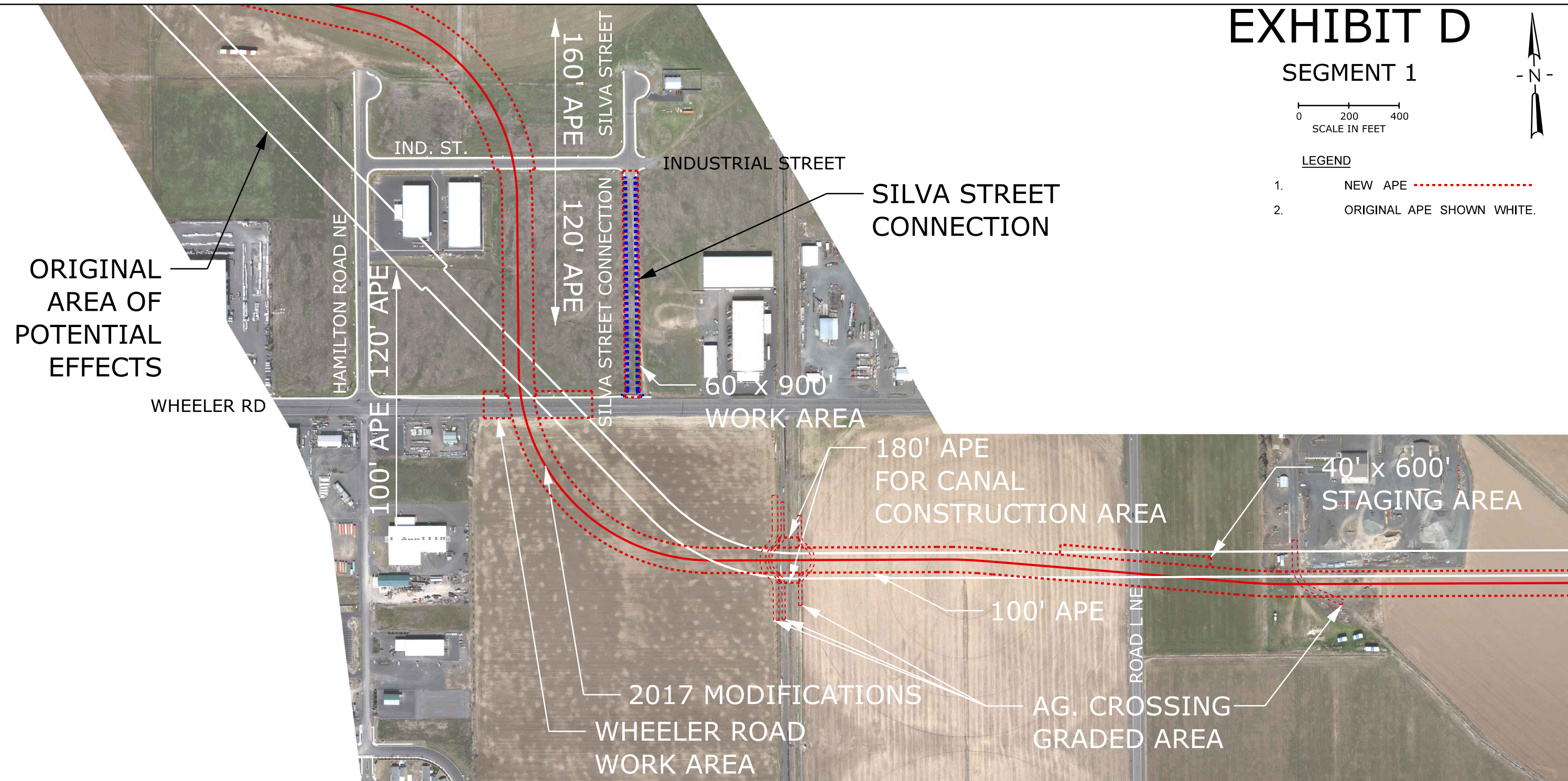
1. NEW APE (red dotted line)
2. ORIGINAL APE SHOWN WHITE.

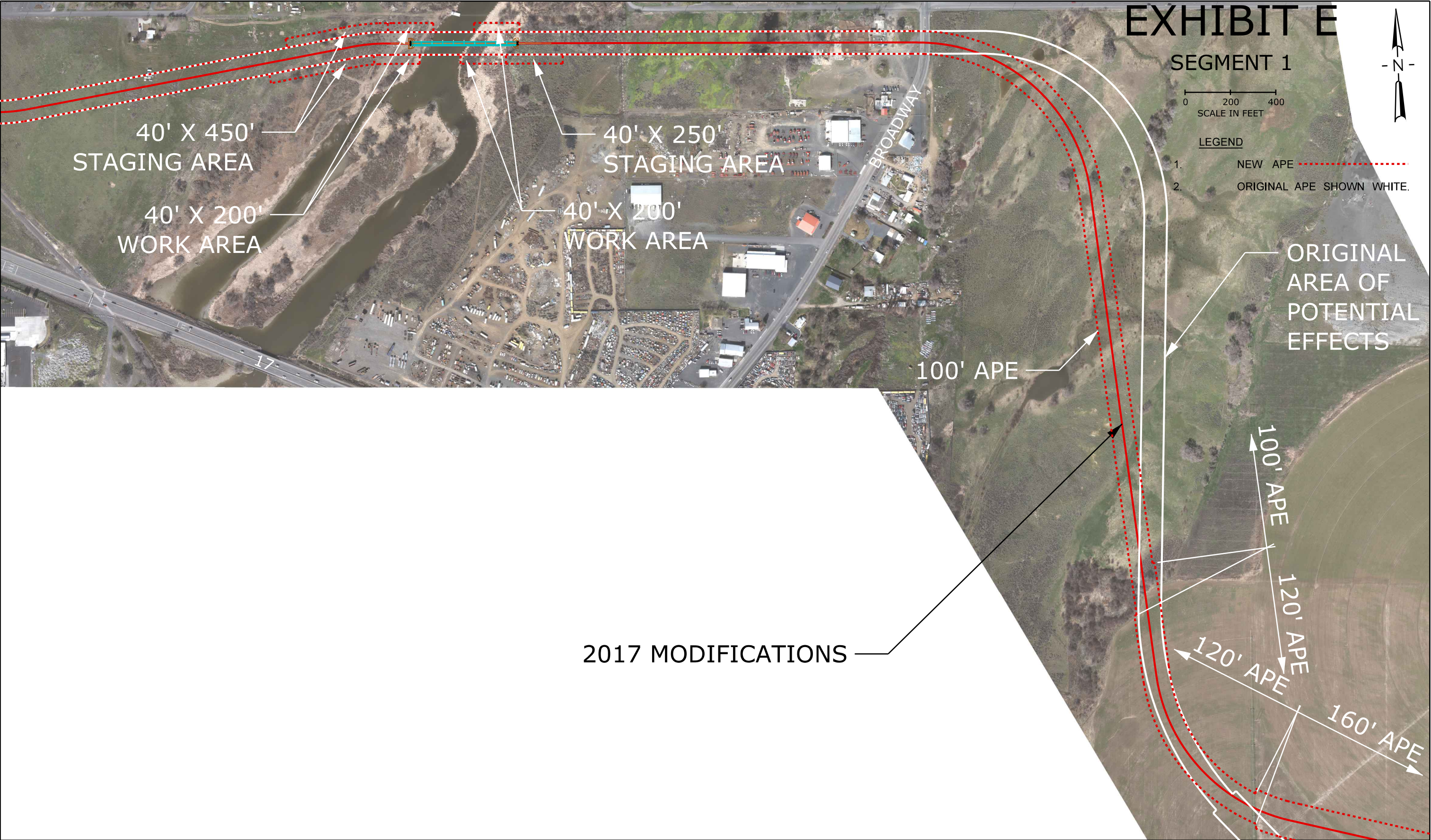


FILE NAME c:\pwworking\halsmitam\d0393887\AMS_working_064 - FRA Exhblt A - Segment 1.dgn												NORTHERN COLUMBIA BASIN RAILROAD PROJECT EXHIBIT C SEGMENT 1		PLAN REF NO	
TIME	9:58:45 AM				REGION NO.	STATE	FED.AID PROJ.NO.								
DATE	4/6/2018				10	WASH									
PLOTTED BY	smitam				JOB NUMBER										
DESIGNED BY															
ENTERED BY															
CHECKED BY															
PROJ. ENGR.					CONTRACT NO.		LOCATION NO.								
REGIONAL ADM.					XL4683										
		REVISION		DATE	BY					P.E. STAMP BOX	DATE	P.E. STAMP BOX	DATE		

A horizontal scale bar with tick marks at 0, 200, and 400. Below the bar is the text "SCALE IN FEET".

1. NEW APE (red dotted line)
2. ORIGINAL APE SHOWN WHITE.

[illegible]



FILE NAME c:\pwworking\inal\sm\itam\d0393887\AMS_working_064 - FRA Exhibit A - Segment 1.dgn				REGION NO. STATE		FED.AID PROJ.NO.						PORT OF MOSES LAKE		NORTHERN COLUMBIA BASIN RAILROAD PROJECT EXHIBIT E SEGMENT 1		PLAN REF NO
TIME 1:06:28 PM				10	WASH							WESTERN PACIFIC ENGINEERING & SURVEY				SHEET
DATE 4/11/2018				JOB NUMBER		LOCATION NO.						JACOBS				OF
PLOTTED BY smitam				CONTRACT NO. XL4683												SHEETS
DESIGNED BY																
ENTERED BY																
CHECKED BY																
PROJ. ENGR.																
REGIONAL ADM.																
REVISION				DATE	BY											

1. NEW APE
2. ORIGINAL APE SHOWN WHITE.

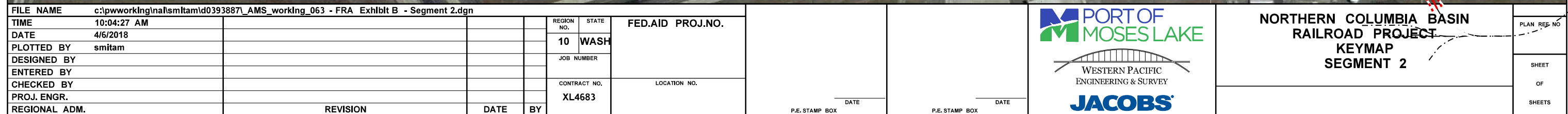


EXHIBIT F

SEGMENT 2



0 100 200
SCALE IN FEET

LEGEND

1. NEW APE
2. ORIGINAL APE SHOWN WHITE.

ORIGINAL
APE

100' APE

2017 MODIFICATIONS

RANDOLPH RD

70' x 500'
STAGING AREA

FILE NAME c:\pwworking\almsmtam\d0393887_AMS_working\ng_063 - FRA Exhlbt B - Segment 2.dgn														PORT OF MOSES LAKE		NORTHERN COLUMBIA BASIN RAILROAD PROJECT EXHIBIT F SEGMENT 2			
TIME	10:05:56 AM				REGION NO.	STATE	FED.AID PROJ.NO.								PLAN REF NO				
DATE	4/6/2018				10	WASH													
PLOTTED BY	smitam				JOB NUMBER										SHEET				
DESIGNED BY															OF				
ENTERED BY																			
CHECKED BY					CONTRACT NO.		LOCATION NO.												
PROJ. ENGR.					XL4683										SHEETS				
REGIONAL ADM.		REVISION	DATE	BY					P.E. STAMP BOX	DATE	P.E. STAMP BOX	DATE							