

## Crockford, Konrad S.

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**From:** Evan Janc <Evan.Janc@westwoodps.com>  
**Sent:** Thursday, June 5, 2025 3:44 PM  
**To:** Crockford, Konrad S.  
**Cc:** Dan Beckmann; Pat Zacharie; Jill Henson; Nate Hesse; Brett Horvath; David Wirt; Carl Anfang  
**Subject:** Westwood Professional Services, Inc.; : DM-25-191  
**Attachments:** ND PSC Response DM-25-191 06 05 25.pdf

You don't often get email from evan.janc@westwoodps.com. [Learn why this is important](#)

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Good afternoon Mr. Crockford,

Attached is a courtesy copy of the response of Westwood Professional Services, Inc., to Complaint Case No. DM-25191, which was sent to your office by certified mail today. Please feel free to reach out to me directly in the event you have trouble accessing the PDF or have any questions regarding this case.

Thank you for your assistance. We look forward to working with you to resolve this matter.

### **Evan Janc**

**Associate Corporate Counsel**

**main** (214) 473-4640

#### **Westwood**

Parkway Centre 1  
2805 Dallas Parkway, Suite 150  
Plano, TX 75093

[westwoodps.com](http://westwoodps.com)

(888) 937-5150

June 5, 2025

North Dakota Public Service Commission  
Attn: Mr. Konrad Crockford  
Director, Compliance Division  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480  
**VIA CERTIFIED MAIL No.: 9589 0710 5270 0780 5077 96**  
**and VIA ELECTRONIC MAIL: [kcrockford@nd.gov](mailto:kcrockford@nd.gov)**

North Dakota Public Service Commission  
Attn: Executive Secretary  
600 East Boulevard Avenue, Dept. 408  
Bismarck, ND 58505-0480

Re: Westwood Professional Services, Inc.;  
Case Number: DM-25-191

Dear Mr. Crockford:

Thank you for your letter dated May 19, 2025. This letter (this “Response”) serves as the formal response of Respondent Westwood Professional Services, Inc. (“Westwood”) to the North Dakota One-Call Complaint dated April 28, 2025 and referred to by the North Dakota Public Service Commission (the “Commission”) as Case No. DM-25-191 (the “Complaint”). Westwood has fully remedied the matters set forth in the Complaint and respectfully requests that the Commission dismiss the Complaint for the reasons set forth herein.

## **The Complaint**

The Complaint alleges that Westwood “[s]urvey crews & excavator had marking done for 811. Dug roads up and filled holes and failed to remove marking flags & materials when work was completed. Basically Littered [sic] the country side and material can cause health issues in cattle feed / grazing with hardware diseases.”

## **Factual Background**

### *1. Project Background*

Westwood provides professional support services including professional land surveying in the State of North Dakota and other states. Westwood’s client engaged Westwood to perform, inter alia, an American Land Title Association survey (the “ALTA survey”) in support of a project located in Eddy County and Wells County, North Dakota. As part of its performance of the ALTA Survey, Westwood made several One-Call requests in accordance with North Dakota law. The One-Call ticket numbers are listed in **Exhibit A**. To the best of Westwood’s knowledge, such markings consisted solely of marker flags (the “Flags”), and no other tangible, removable marking materials were used in the process of utility location. Westwood

staff continues to perform other services in the vicinity, however, the surveying work is complete as of the date of this letter.

## 2. *Westwood's Remediation Efforts*

Westwood received service of process of the Complaint on Friday, May 23, 2025. While Westwood denies that it violated North Dakota Century Code Chapter 49-23, it immediately began planning remediation efforts relating to the allegations set forth in the Complaint. Specifically, Westwood quickly mobilized a field crew (the "Field Crew") to the locations of all One-Call Tickets submitted by Westwood for the project in both Eddy County and Wells County. The Field Crew removed all flags it could locate upon visiting each specific Ticket location, and documented these removals by taking *before* and *after* photographs, which are attached as Exhibit B. Where the Field Crew reasonably believed such markings were for unrelated projects, it left those markings undisturbed, and photographs of these unrelated markings are attached as Exhibit C. The Field Crew did not, nor did it need to, access any private property during the removal of the Flags.

## Argument

### 1. *The Commission Should Dismiss The Complaint as Failing to Allege a Violation*

While the Complaint does not specify the regulation Westwood allegedly violated, North Dakota Century Code § 49-23-05 states that in order to avoid damage to and minimize interference with underground facilities in and near the excavation area, a ticket holder shall:

1. Maintain a clearance between an underground facility and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the facility.
2. Provide support in a manner approved by the operator for underground facilities in and near the construction area, including backfill operations to protect the facilities. Backfill must be of a material equal to or better in both quality and quantity to the existing backfill.
3. Assume ownership of materials used to mark the facility, use reasonable efforts to maintain markings during excavation, and remove all tangible marking materials used to mark the underground facility and site area upon completion of the excavation.
4. Assume the cost of excavation to expose the facility unless otherwise indicated by owner of facility.
5. Conduct the excavation in a careful and prudent manner.
6. Properly manage spoil material to prevent shifting or falling material that could damage belowground facilities.

See N.D.C.C. § 49-23-05.

Westwood specifically denies it committed a violation of N.D.C.C. § 49-23-05. It appears the Commission has not found a violation where a respondent failed to *remove* utility marking flags. *C.f. Wagner Const., Inc. (Maintain Markings) Damage Prevention Enf't*, Case No. PU-14-760, 2016 WL 853059 (N.D.P.S.C.

Feb. 24, 2016) (Commission finds that respondent violated N.D.C.C. § 49-23-05(3) by failing to use reasonable efforts to maintain markings during excavation by not maintaining the markings for the 21-day effective period); *c.f. also Pub. Serv. Comm'n KPH, Inc. Damage Prevention Enf't*, Case No. PU-17-338, *Pub. Serv. Comm'n KPH, Inc. Damage Prevention Enf't*, Case No. PU-17-355, 2017 WL 6730368 (N.D.P.S.C. Dec. 20, 2017) (Commission finds that respondent violated N.D.C.C. § 49-23-05(3) by failing to contact the notification center and provide an excavation or location notice before beginning an excavation). As such, the alleged failure to remove the Flags does not constitute a violation of N.D.C.C. § 49-23-05, and the Commission should summarily dismiss the Complaint in favor of Westwood.

## 2. *No Actual Damages Took Place as a Result of the Alleged Violation*

Alternatively, if the Commission determines Westwood committed a violation of N.D.C.C. § 49-23-05, the Commission should not assess penalties because no actual damages occurred, and Westwood took precautions in accordance with North Dakota law to avoid damage and minimize interference. The Commission in past decisions notes when damage did not occur as a result of an alleged violation. *See, e.g., Pub. Serv. Comm'n KPH*, PU-17-355 at \*1 (“In Case No. PU-17-338 the complainant alleges a violation by KPH of North Dakota Century Code section 49-23-05(3) for failure to use reasonable efforts to maintain markings during excavation. The complainant did not indicate that damages occurred or that utility customers were affected as a result of the incident.”). The Complaint fails to allege any actual damages, instead merely speculating as to possible future damages. The Commission in past decisions takes into consideration *actual damages* incurred as a result of an alleged violation. *See e.g., Pub. Serv. Comm'n Veit & Co., Inc. Damage Prevention Enf't*, Case No. PU-17-376, 2018 WL 495867 (N.D.P.S.C. Jan. 10., 2018) (“The Complaint alleges that the excavation activity resulted in damage to a 288 fiber optic cable providing voice and broadband telecommunications services and serving Hebron Emergency 911 of approximately \$13,213.72.”). Given the lack of actual damages, the Commission should not assess penalties against Westwood in the event the Commission determines a violation occurred.

## 3. *Westwood Promptly Mitigated the Alleged Violation*

Finally, Westwood respectfully requests that in the event the Commission determines a violation of N.D.C.C. § 49-25-03 occurred, the Commission takes into consideration Westwood’s rapid mitigation efforts undertaken prior to the filing of this Response.

### **Contact Information**

In the event the Commission seeks additional information relating to the Complaint, this Response, or anything else pertaining to this matter, please contact Respondent as follows:

Westwood Professional Services, Inc.  
Attn: Evan Janc, Associate Corporate Counsel  
2805 Dallas Parkway, Suite 150  
Plano, Texas 75093  
Email: [Evan.Janc@westwoodps.com](mailto:Evan.Janc@westwoodps.com)  
Phone: (469) 521-1637

## Prayer

For the foregoing reasons, Westwood respectfully requests that the Commission summarily dismiss the Complaint in its entirety. We appreciate your assistance with this matter.

**WESTWOOD PROFESSIONAL SERVICES, INC.**



Evan Janc  
Associate Corporate Counsel

# Exhibit A Ticket Numbers

24149774	24150035	24151006
24149797	24150037	24151016
24149805	24150042	24151029
24149809	24150052	24151033
24149814	24150054	24151050
24149826	24150396	24151061
24149829	24150417	24151065
24149839	24150425	24151074
24149858	24150428	24151086
24149866	24150453	24151096
24149874	24150462	24151102
24149882	24150466	24151111
24149889	24150473	24151114
24149908	24150494	24151123
24149936	24150501	24151130
24149943	24150508	24151143
24149963	24150513	24151157
24149968	24150518	24151161
24149982	24150527	24151162
24149987	24150532	24151169
24150001	24150536	24151170
24150011	24150543	24151173
24150023	24150546	Unidentified Ticket
24150026	24150556	
24150031	24151000	

# **Exhibit B**

## **Before and After Photographs of Flag Removal**

# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

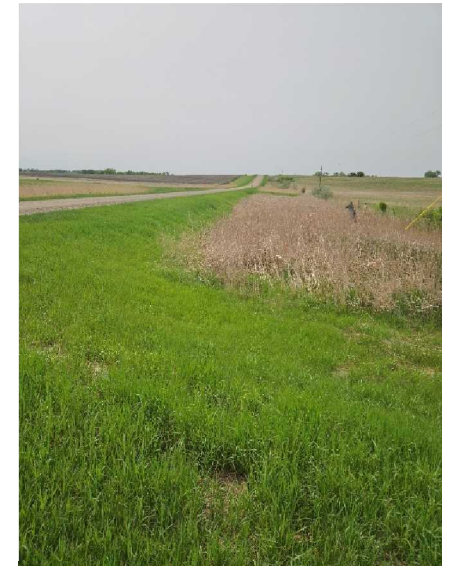
main (214) 473-4640  
fax (952) 937-5822

Ticket #24149774:

Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149797: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149805: No flags identified

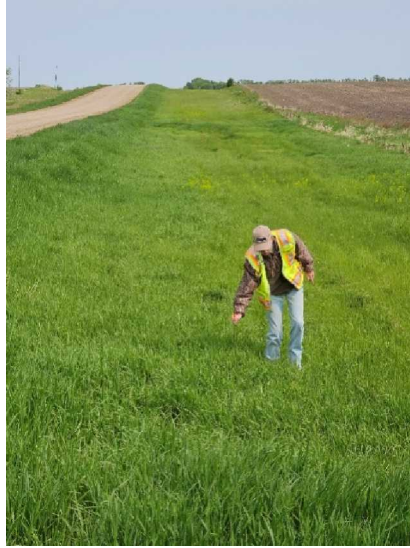


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149809:  
Before:



After:

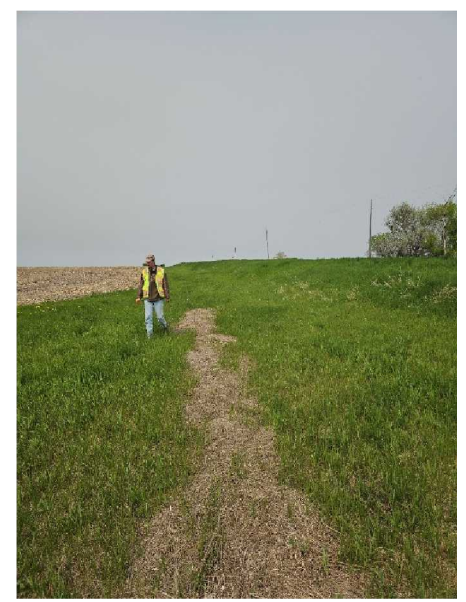
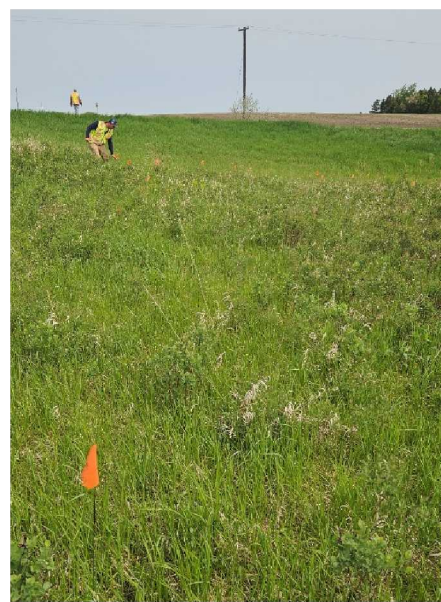
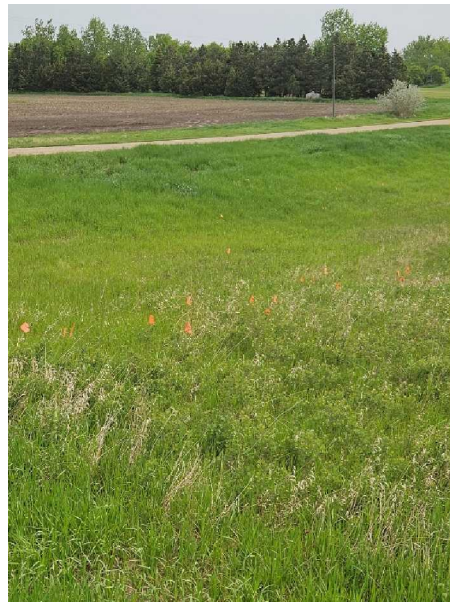
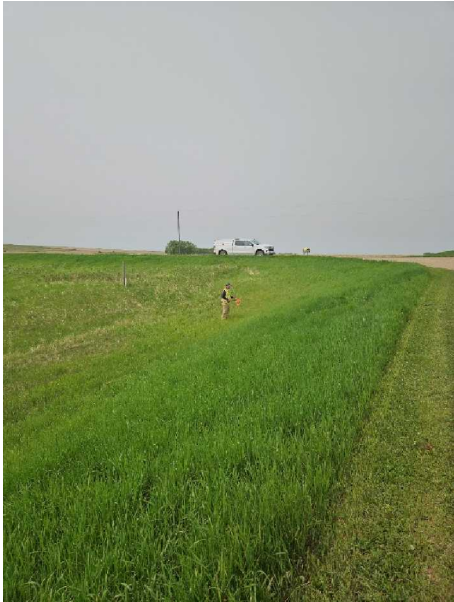


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149814:**  
Before:



After:

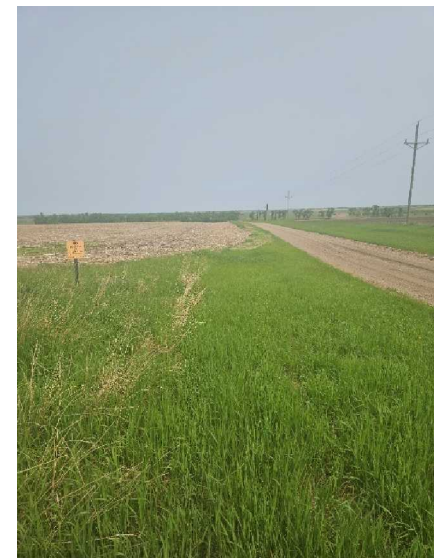


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149826:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149829:**  
Before:



After:

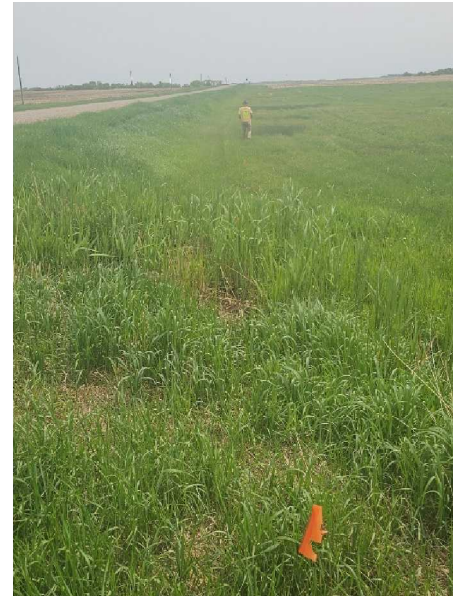


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149839:**  
Before:



After:

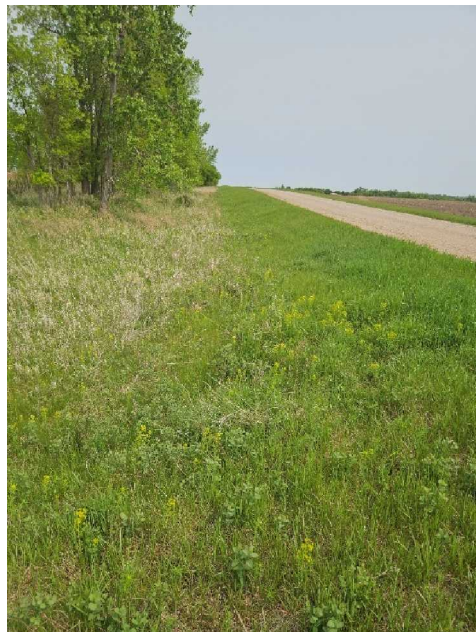


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149858:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149866: No flags identified

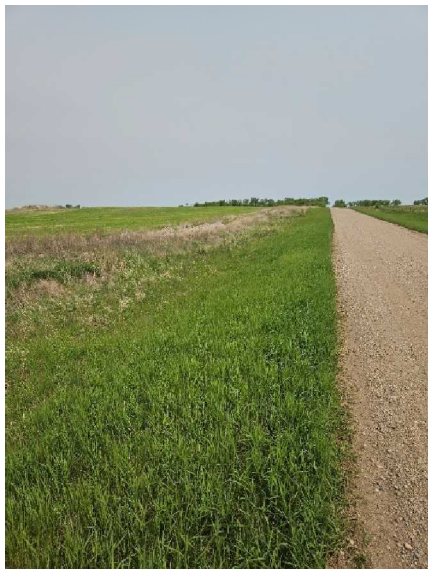


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149874:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149882: No flags identified

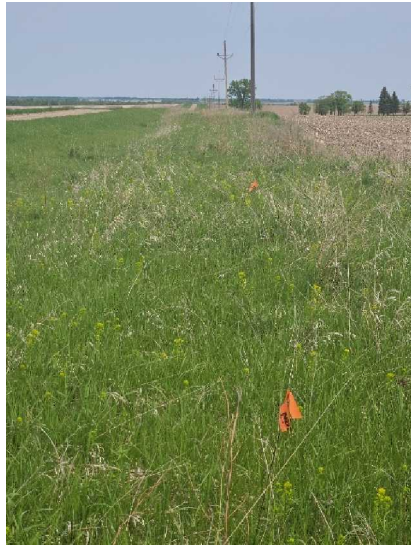


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149889:  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149908:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149936:**

Before:



After:

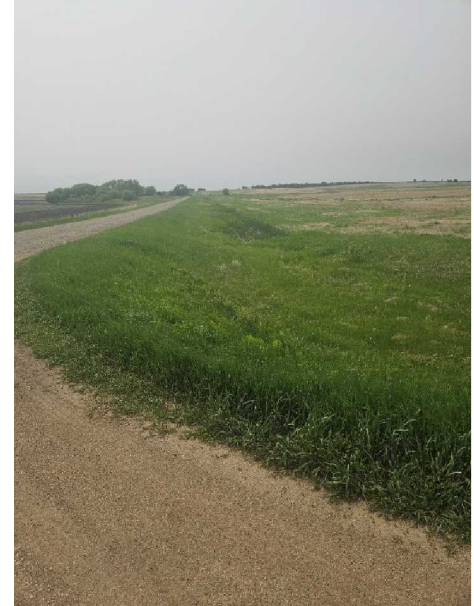


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149943: No flags identified

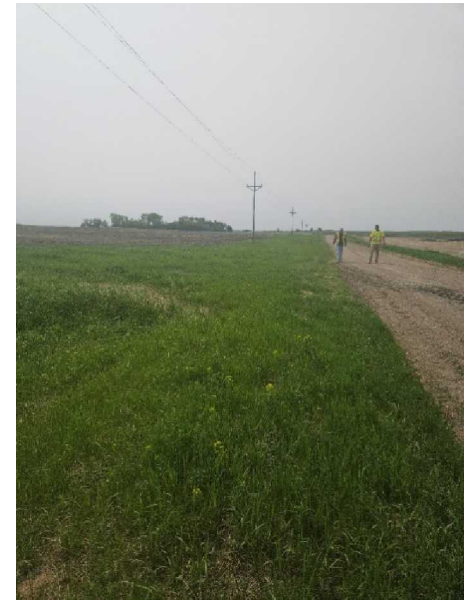


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149963: No flags identified

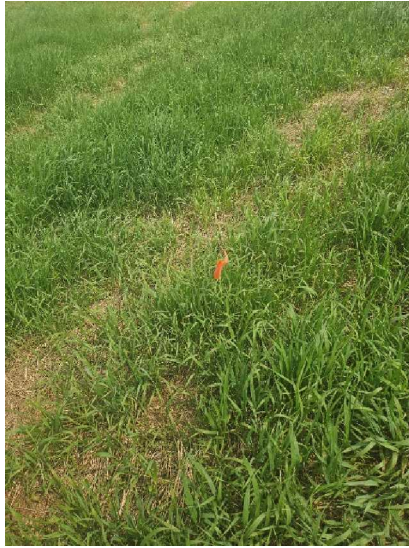


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149968:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24149982:** No flags identified

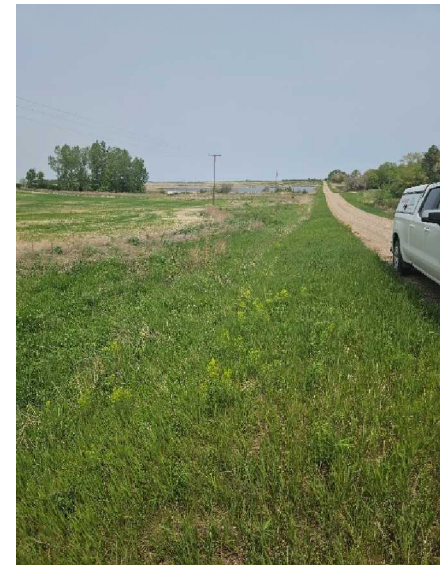
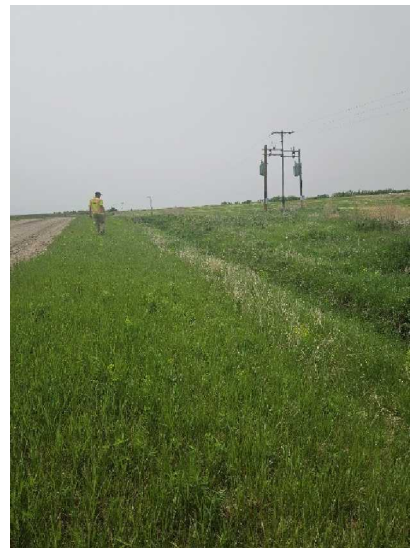


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24149987: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150001: No flags identified

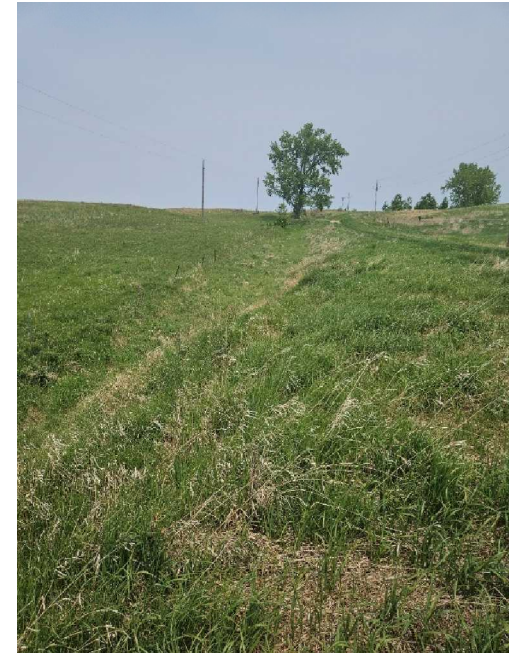


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150011:** No flags identified



# Westwood

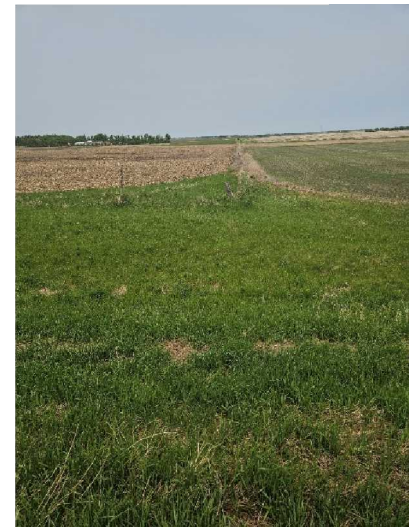
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150023:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150026:** No flags identified



# Westwood

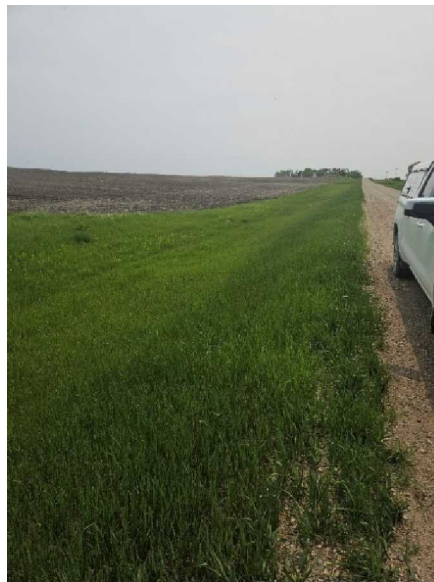
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150031:  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150035: No flags identified



**Ticket #24150037:** No flags identified

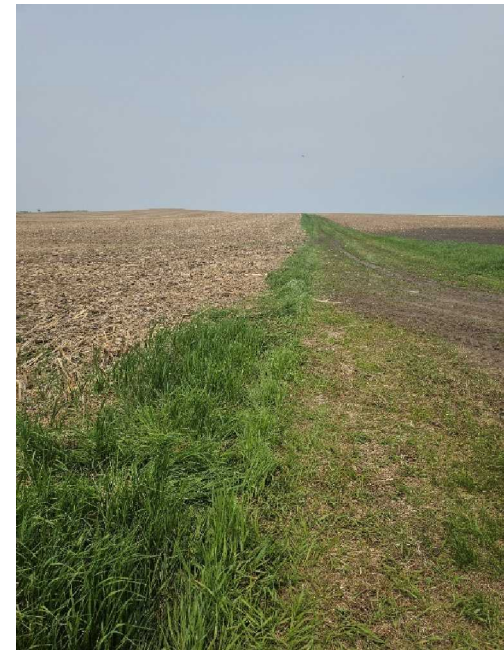


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150042: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150052: No flags identified

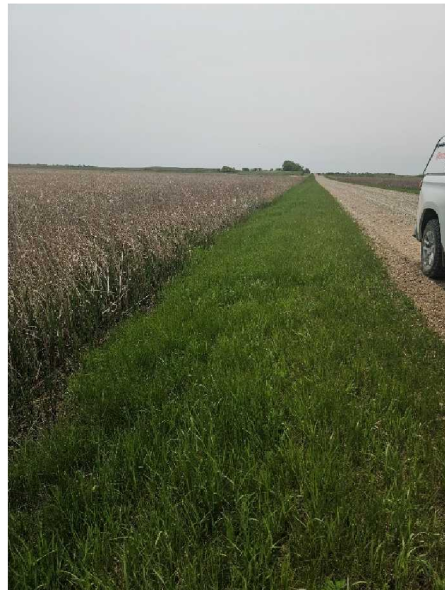


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150054: No flags identified

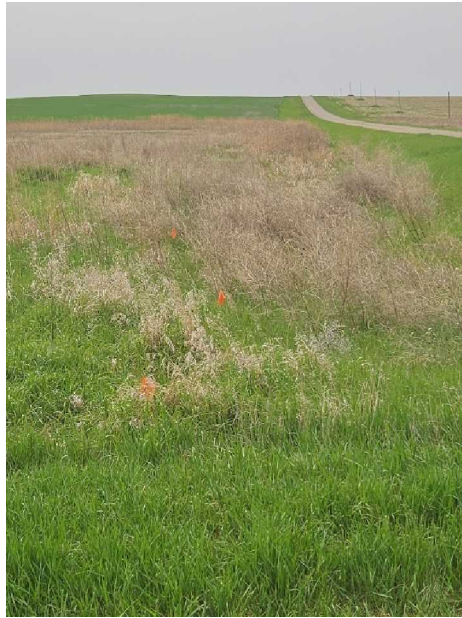


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150396:  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150417: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150425:**  
Before:



After:

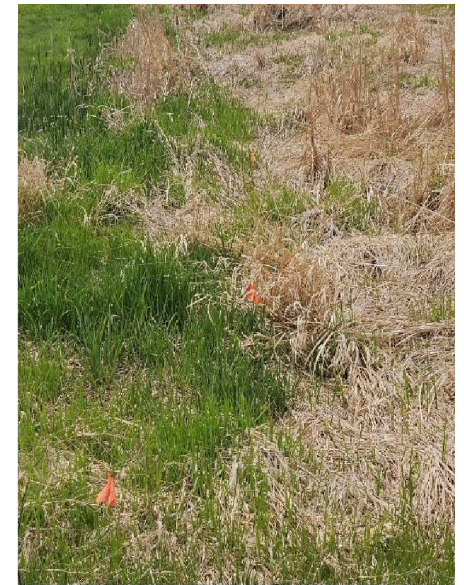
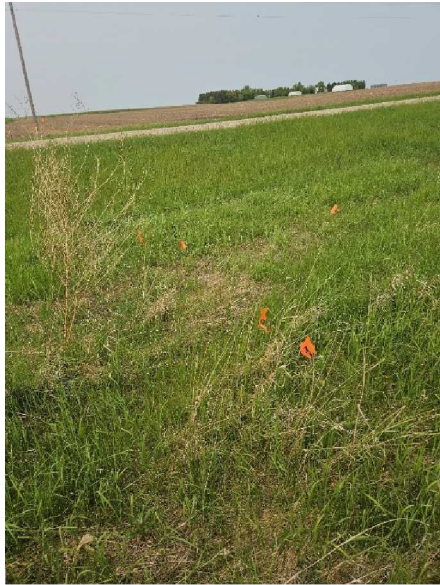


# Westwood

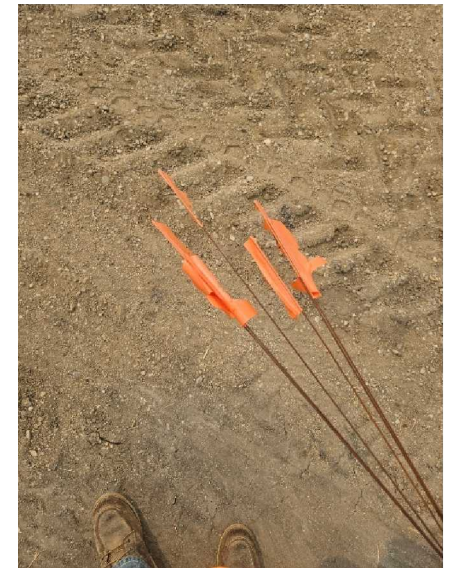
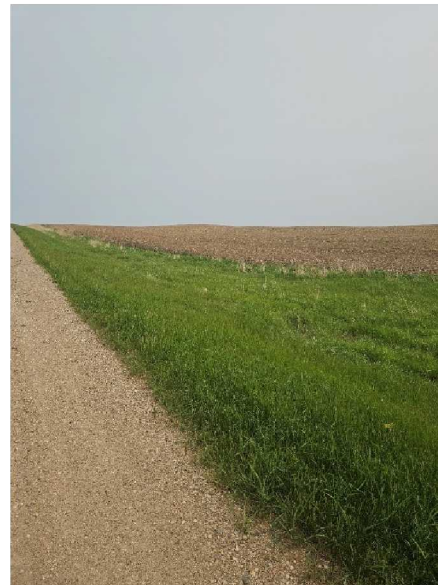
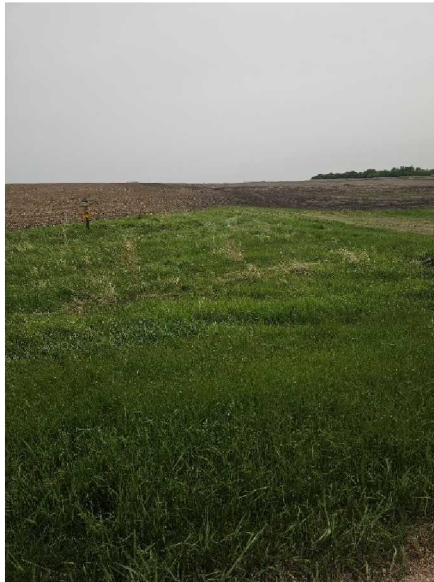
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket# 24150428:**  
Before:



After:

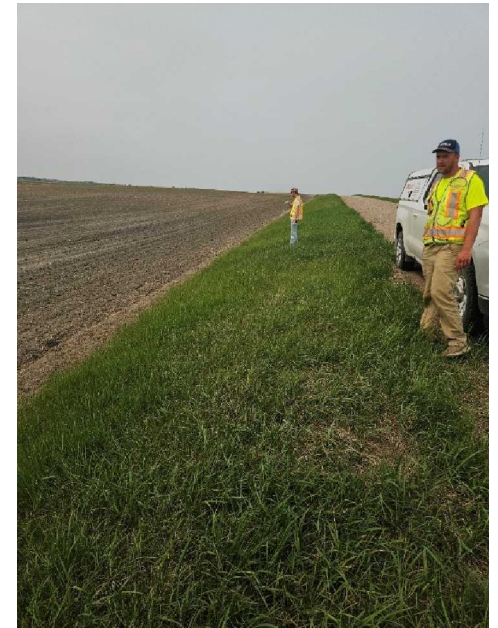
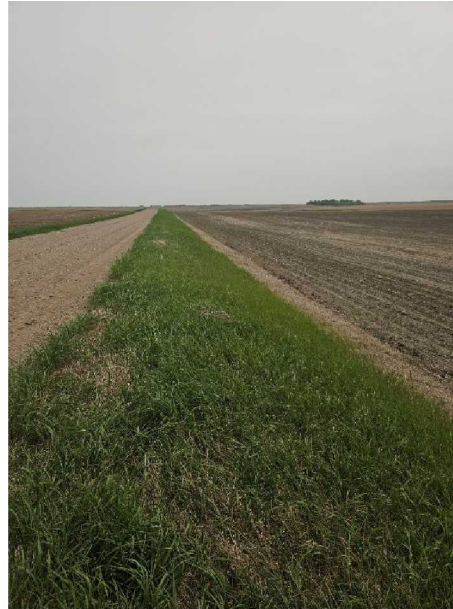


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150453: No flags identified

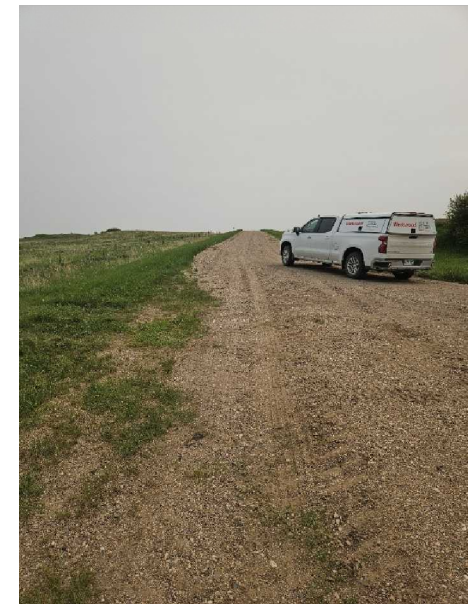


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150462: No flags identified

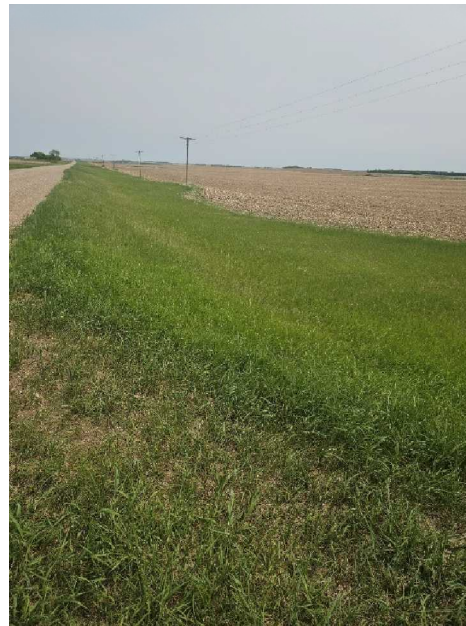


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150466: No flags identified

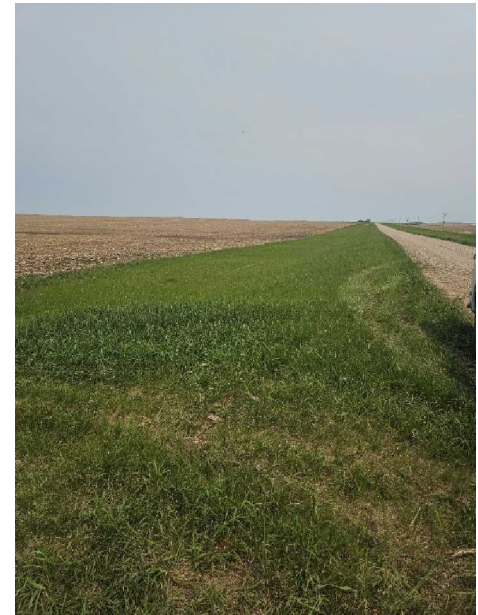


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150473:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150494: No flags identified

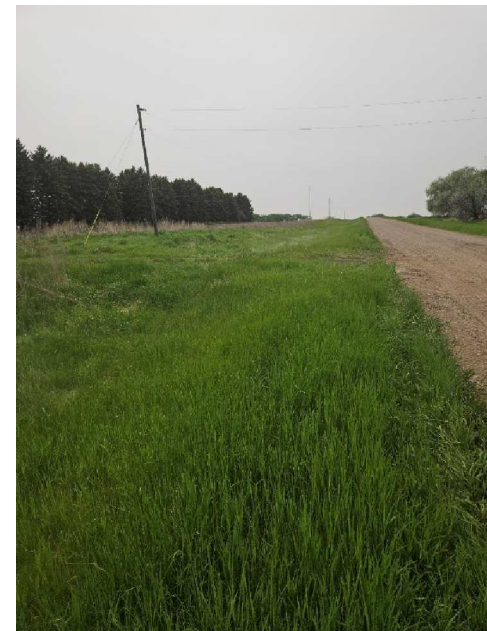


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150501: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150508: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150513: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150518: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150527: No flags identified

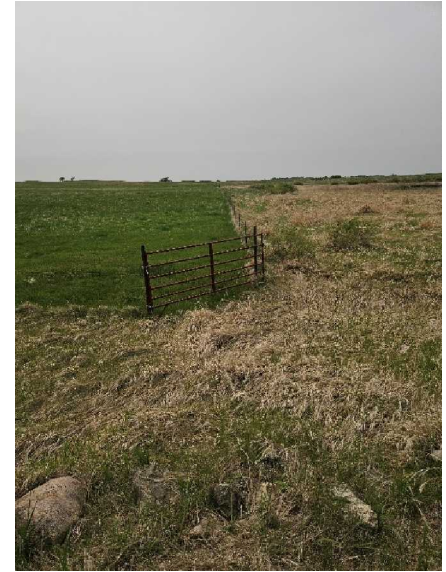


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150532: No flags identified

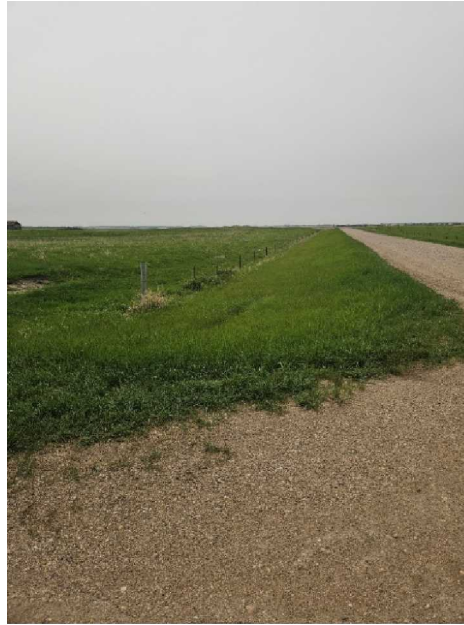


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150536: No flags identified

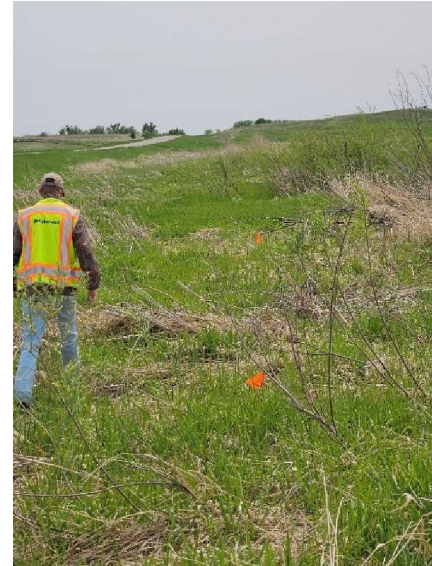


# Westwood

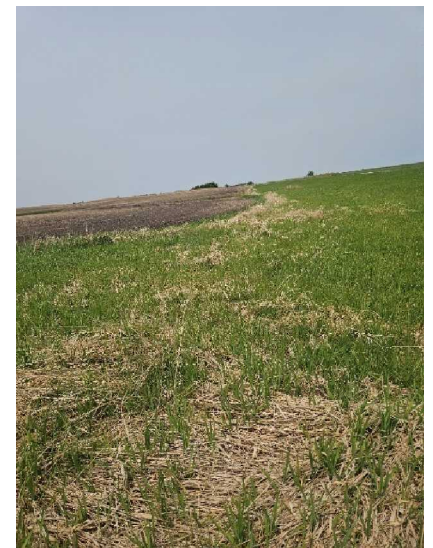
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150543:  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24150546:  
Before:



After:



# Westwood

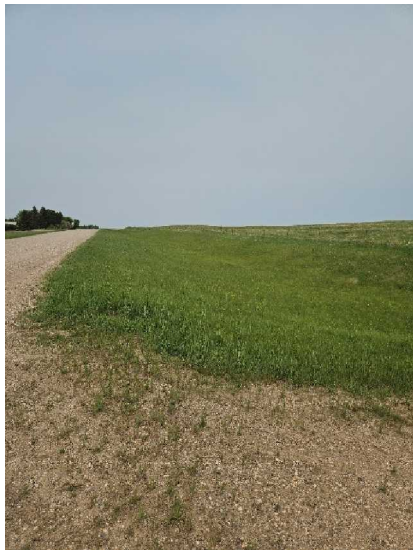
2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24150556:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

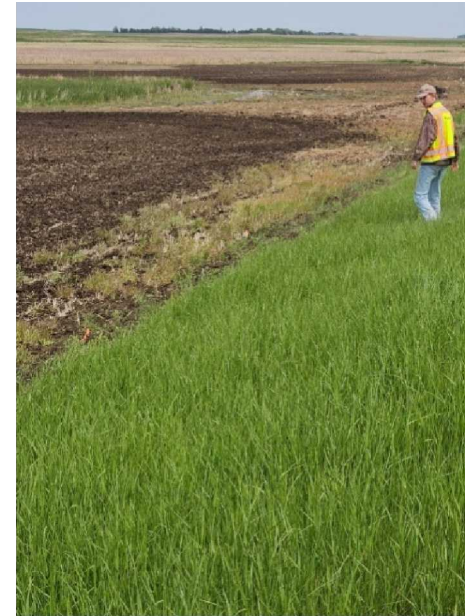
main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151000:** No flags identified

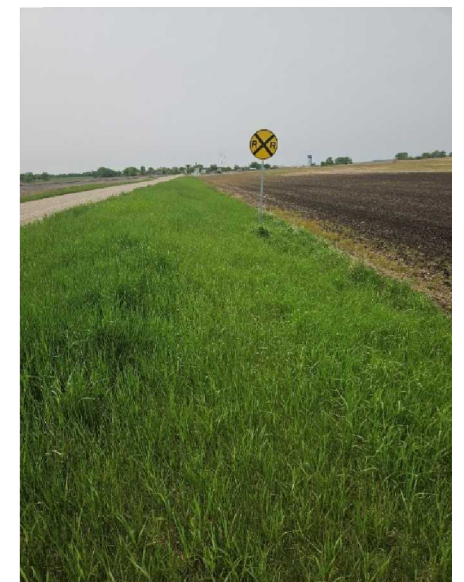


# Westwood

Ticket #24151006:  
Before:



After:



2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151016:**

Before:



After:



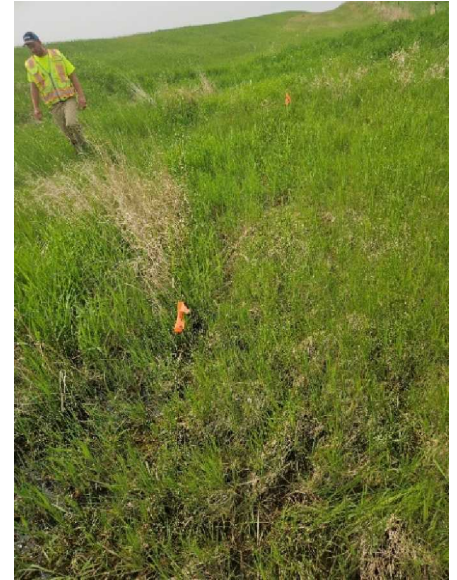
# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

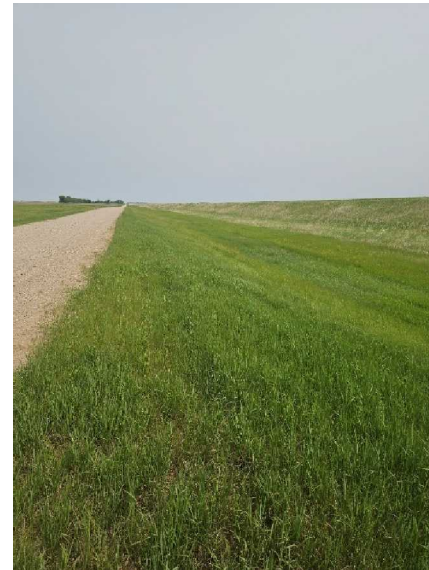
main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151029:**

Before:



After:

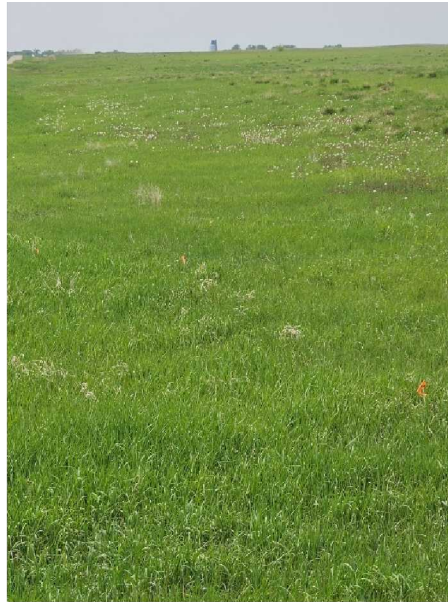


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151033:**  
Before:



After:



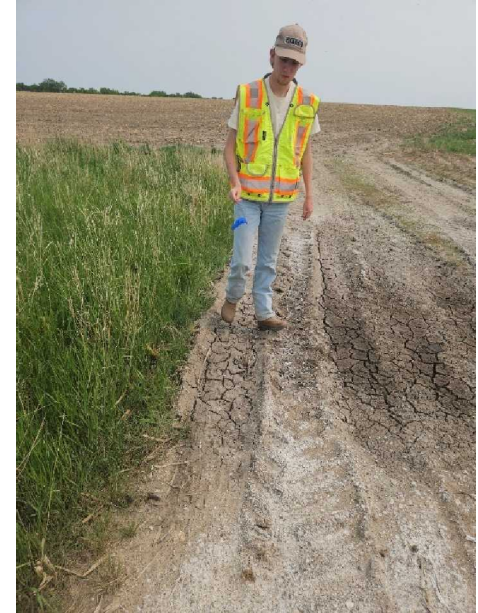
# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151050:**

Before:



After:

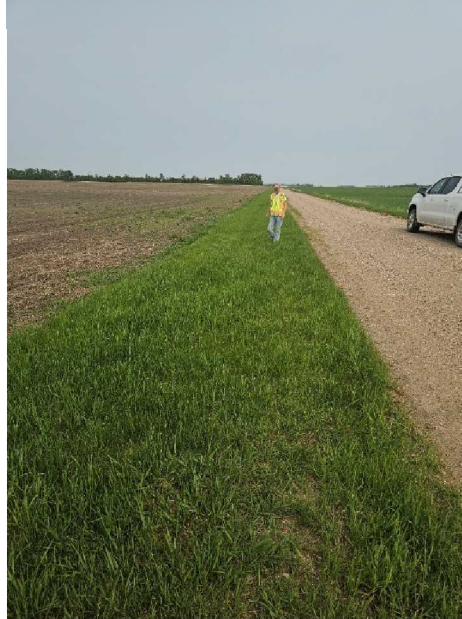


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151061: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151065:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151074:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151086:**

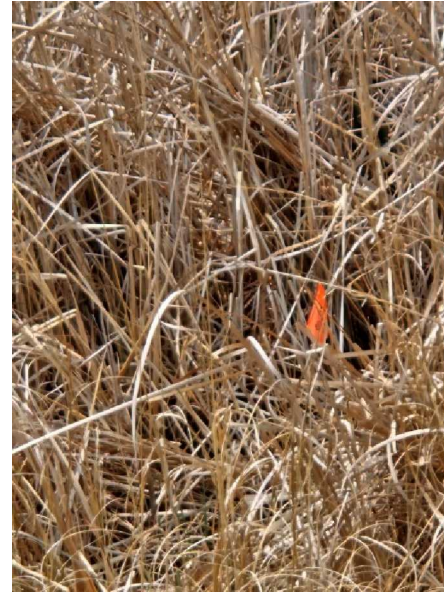
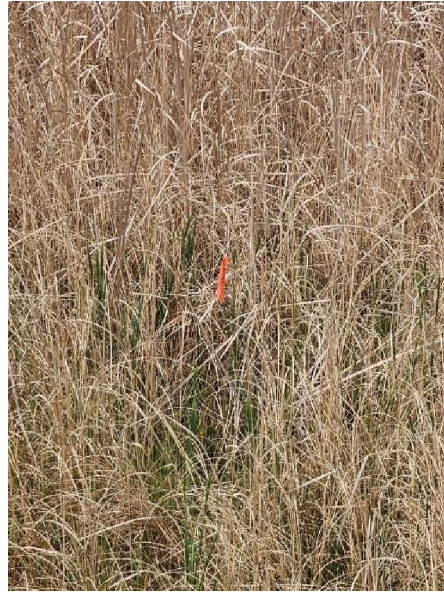
Before:



After:



**Ticket #24151096:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151102:**  
Before:



After:

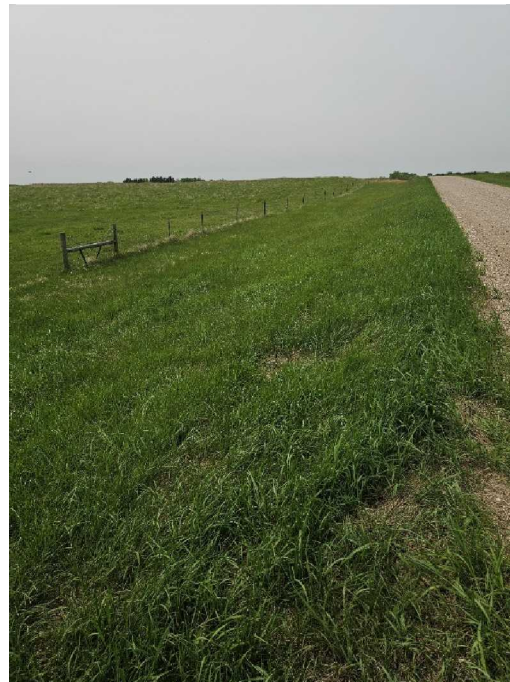


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151111: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151114: No flags identified

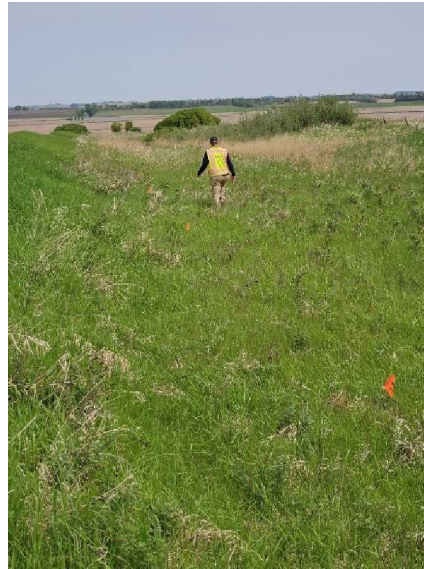


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151123:**  
Before:



After:

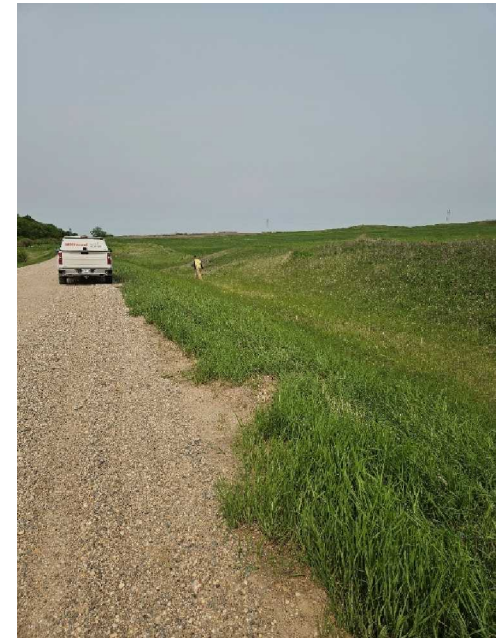


# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151130: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket # 24151143:**  
Before:



After:



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151157: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151161: No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151162:** No flags identified



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

Ticket #24151169: No flags identified



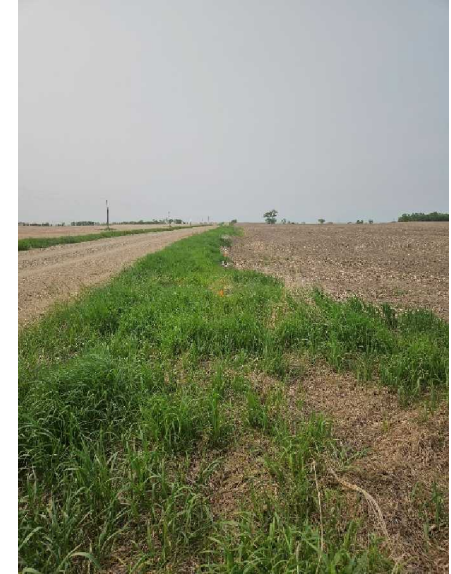
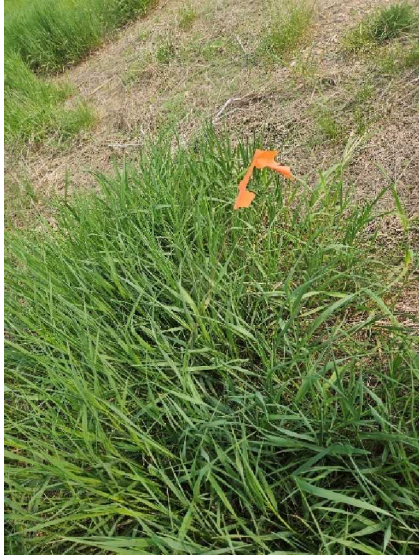
# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151170:**

Before:



After:



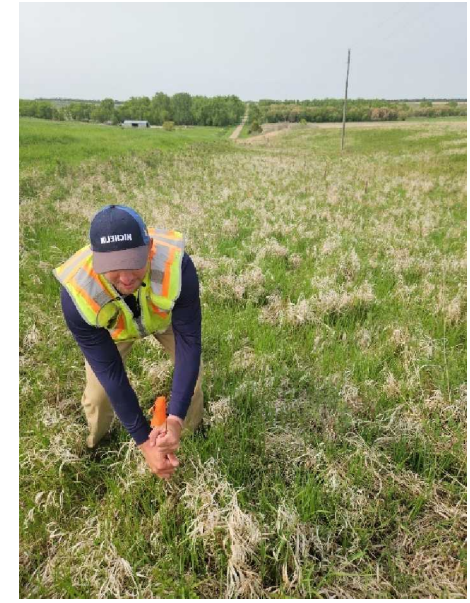
# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822

**Ticket #24151173:**

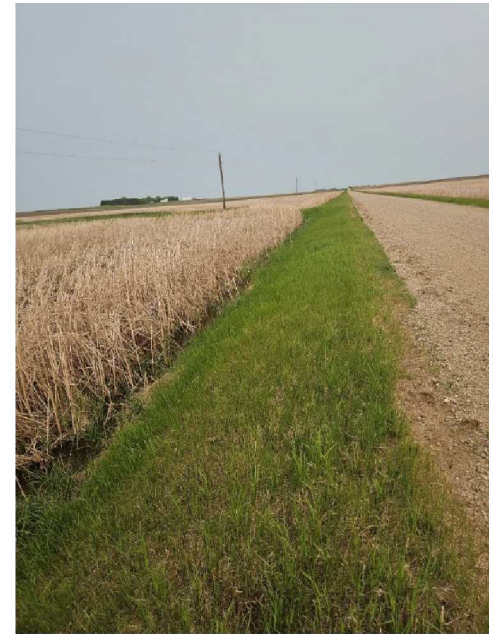
Before:



After:



**Unidentified Ticket:** No flags identified



## Removed Flags:



**Exhibit C**  
**Photographs of Unrelated Markings**



# Westwood

2805 North Dallas Parkway, Suite 150  
Plano, TX 75093

main (214) 473-4640  
fax (952) 937-5822



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**main** (214) 473-4640  
**fax** (952) 937-5822









