



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT
5151 FLYNN PARKWAY, SUITE 306
CORPUS CHRISTI, TEXAS 78411-4318

MEMORANDUM FOR RECORD

24 July 2025

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),¹ SWG-2024-00371.

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.² AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.³ For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),⁴ the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court’s decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Texas due to litigation.

1. SUMMARY OF CONCLUSIONS.

¹ While the Supreme Court’s decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² 33 CFR 331.2.

³ Regulatory Guidance Letter 05-02.

⁴ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

2. REFERENCES.

- a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).
- b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).
- c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)
- d. *Sackett v. EPA*, 598 U.S. __, 143 S. Ct. 1322 (2023)
- e. Site Visit 25 June 2025

3. REVIEW AREA. The Review Area is an approximately 3-acre site containing an existing electrical substation located on the west side of State Park Road 100 between the South Padre Island Convention Center and South Padre Island Birding and Nature Center in South Padre Island, Cameron County, Texas. The Review Area consists of an elevated pad consisting of gravel and caliche and surrounded by a chain-link fence.

Latitude: 26.138366 N; Longitude: 97.174562 W

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A⁵
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. N/A

⁵ This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. TNWs (a)(1): N/A
 - b. Interstate Waters (a)(2): N/A
 - c. Other Waters (a)(3): N/A
 - d. Impoundments (a)(4): N/A
 - e. Tributaries (a)(5): N/A
 - f. The territorial seas (a)(6): N/A
 - g. Adjacent wetlands (a)(7): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CESWG-RDR

SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00371

- a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).⁸ Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water. N/A
- b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A
- c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A
- d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A
- e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*. N/A
- f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A

⁸ 51 FR 41217, November 13, 1986.

CESWG-RDR

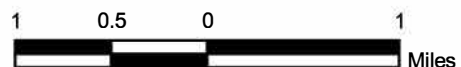
SUBJECT: Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), SWG-2024-00371

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
 - a. Site Visit 25 June 2025
 - b. Google Earth Aerials dated: 1995, 2006, and 2024
 - c. USGS Topographic Map/Scale: 2019 Port Isabel NW, TX; 1:24,000 (2022)
 - d. US Fish and Wildlife Service (FWS) National Wetland Inventory (NWI): Web Mapper dated 21 July 2025
 - e. ORM2 Database - No jurisdictional determinations or permit actions have occurred within the review area.
10. OTHER SUPPORTING INFORMATION. N/A
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Legend

Project Site



Project Mngr:	RB
Drawn By:	RB
Checked By:	JEH
Approved By:	JEH

Project No.	88197154
Scale:	1 in = 1 miles
TBPE Firm No.	F-3272
Date:	August 2019

Terracon
Consulting Engineers & Scientists
6911 Blanco Road San Antonio, TX 78216
PH (210) 641-2112 Fax (210) 641-2124

Vicinity Map
South Padre GIS Substation State Park Road No. 100 South Padre Island, Cameron County, Texas

Exhibit
1

Path: N:\1881 Pham\2019\88197154\T&E\01_VicinityMap_GISSubstation.mxd

SWG-2024-00371

South Padre GIS Substation

SWG-2024-00371 Sheet 2 of 6

Laguna Madre Nature Trail

Legend

Review Area (3.0 ac)
26.138366 N, 97.174562 W

South Padre GIS Substation

Electric Substation

Water Tower

Isla del Sol

South Padre Island Birding And Nature...

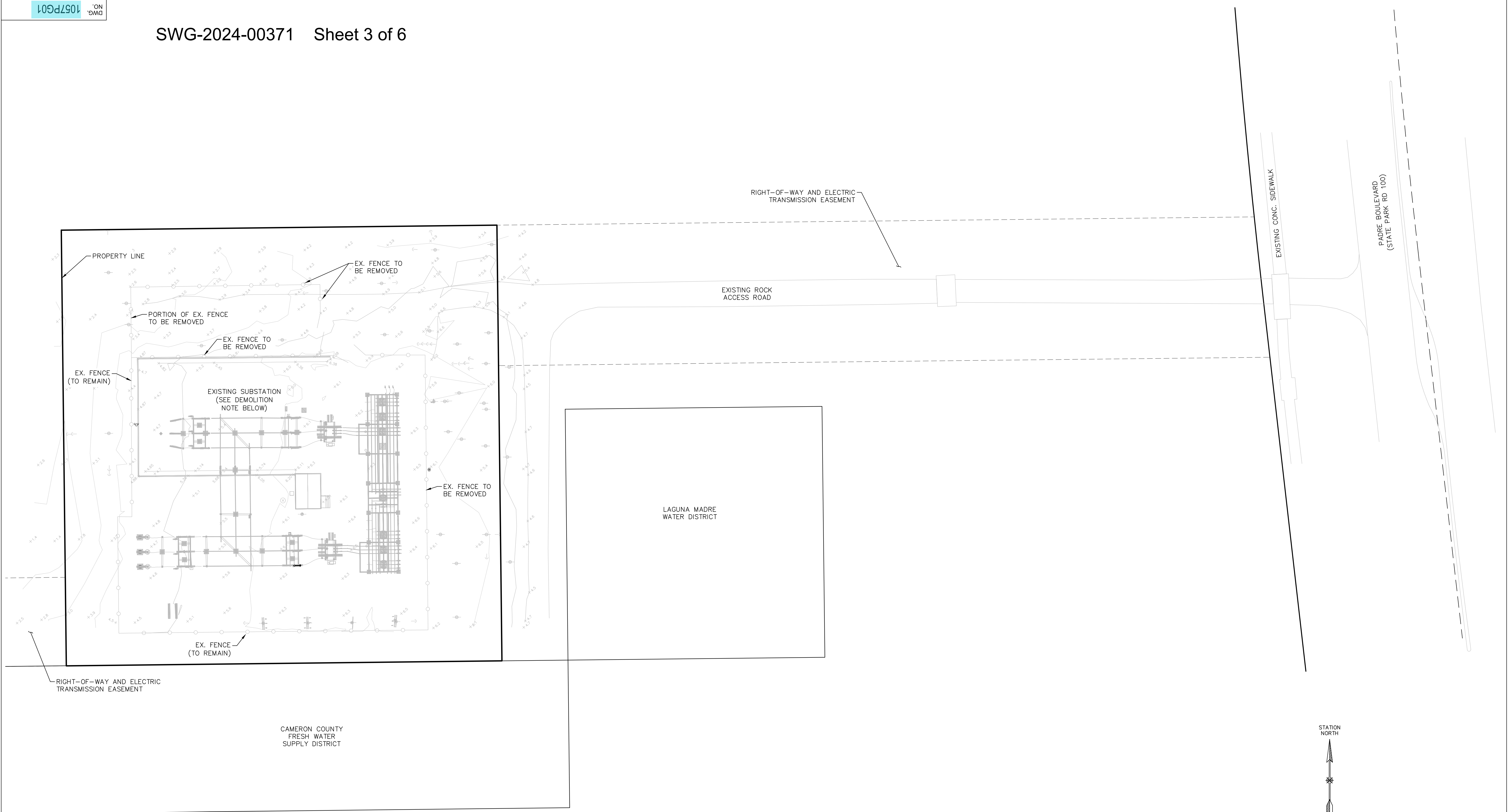
Sea Turtle, Inc

Google Earth

Image © 2025 Airbus

600 ft

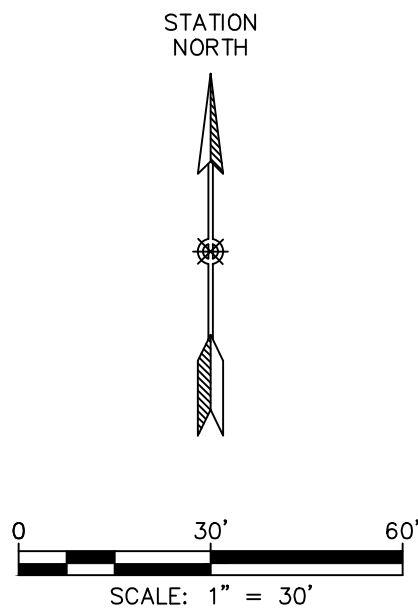




DEMOLITION NOTE:

SEE SHEET 1057PE01_DEMO FOR PHASED
YARD EQUIPMENT DEMOLITION PLAN.

SHEET INDEX	
SHEET NO.	TITLE OF SHEET
1	EXISTING CONDITIONS
2	FINISHED GRADE PLAN
3	SECTIONS
4	EROSION CONTROL PLAN



BETA
ENGINEER OF RECORD
TSPE FIRM F-2016
4725 HWY 28 E
PINEVILLE, LOUISIANA 71360

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TEXAS CENTRAL COMPANY			
SOUTH PADRE ISLAND SUBSTATION NO. 1057			
SOUTH PADRE ISLAND		TEXAS	
138/12KV			
GRADING PLAN			
EXISTING CONDITIONS			
SCALE: 1" = 30'	DR: CGV	ENG: JAL	CH: JAL
WO#: 42989562C1	APPD: JEH	DATE: 3/28/24	
 AMERICAN ELECTRIC POWER	1 RIVERSIDE PLAZA COLUMBUS, OH 43215	DWG. NO. 1057PG01	R E V 0

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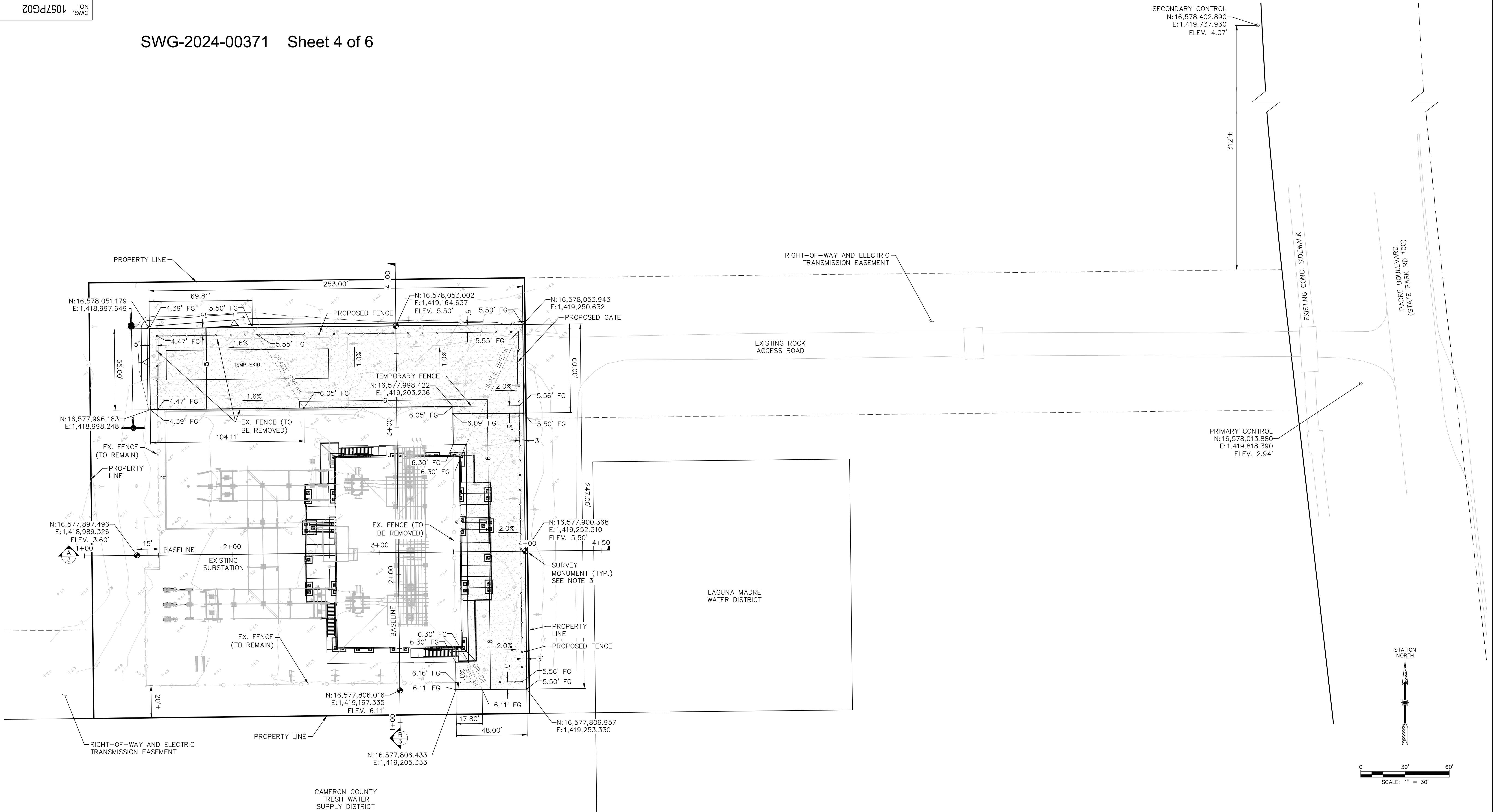
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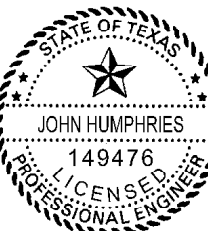
TENTHS 10 20 30

INCHES 1 2 3

NO DATE REVISION DESCRIPTION APPR DR ENG CK ISSUE#



- NOTES:**
- SEE GRADING AND CONSTRUCTION NOTES ON COVER SHEET.
 - DESIGN CONTOURS SHOWN ARE FINISHED GRADE. ALL CONTOURS ARE SHOWN AT ONE FOOT INTERVALS.
 - SURVEY MONUMENT: 2"x 24" IRON PIPE WITH CAP.



John Humphries
2024.04.02
08:00:53-05'00"

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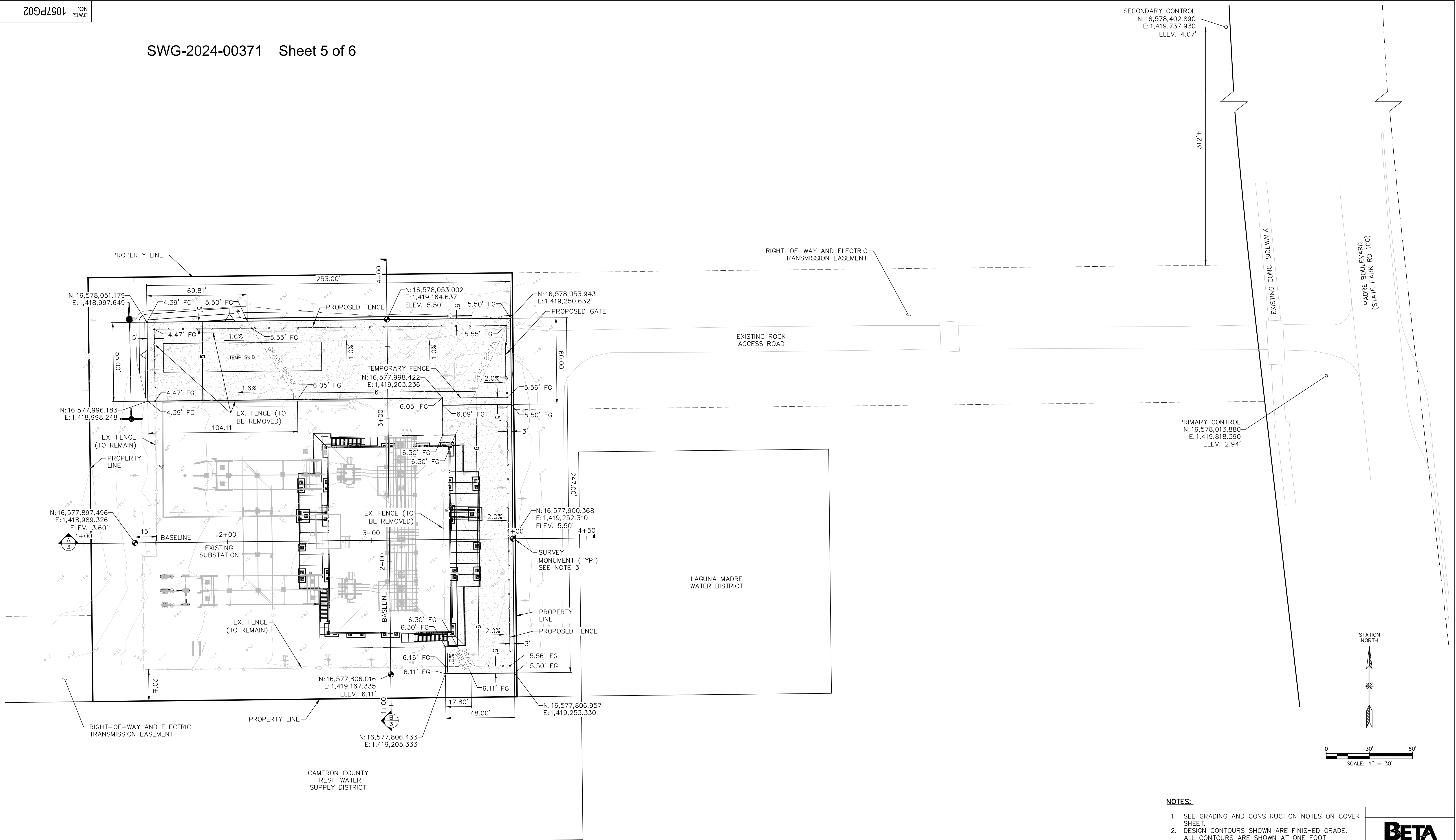
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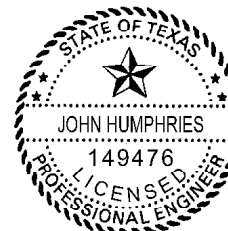


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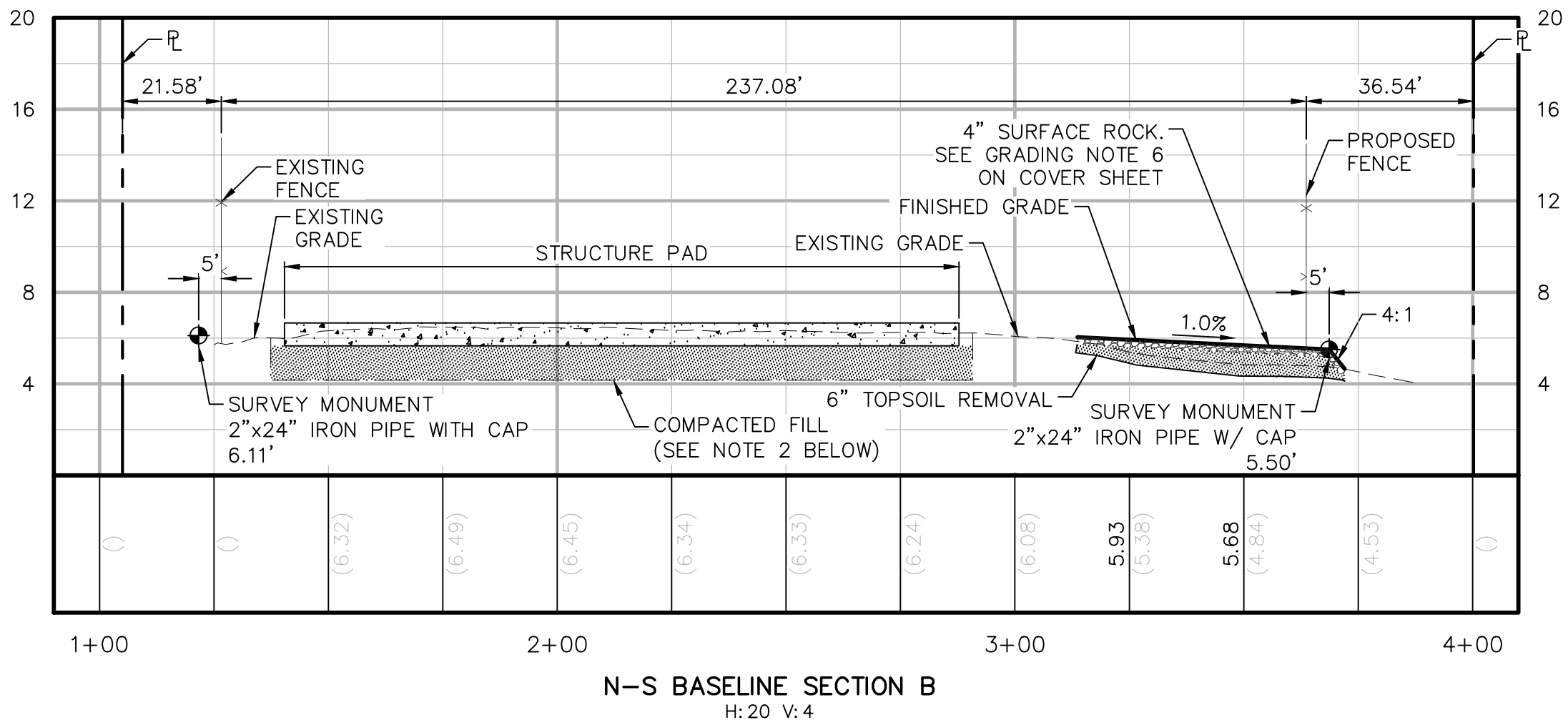
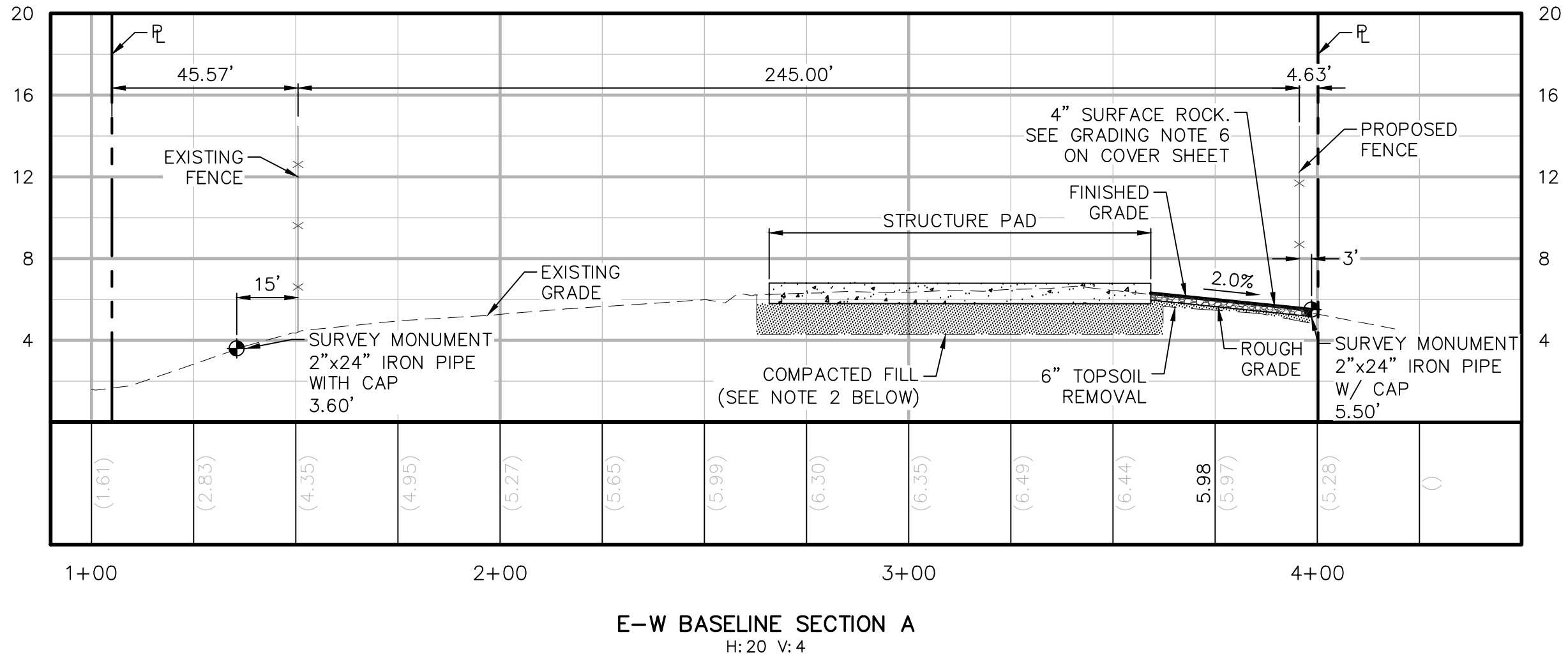
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NO DATE REVISION DESCRIPTION APPR DR ENG CK ISSUE#



NOTES:

- SEE SHEET 1057PG02 (FINISHED GRADE PLAN) FOR PLAN VIEW.
- SEE GEOTECHNICAL REPORT AND FOUNDATION PLANS FOR EARTHWORK REQUIREMENTS AT STRUCTURE PAD AND FOUNDATIONS.

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TEXAS CENTRAL COMPANY

SOUTH PADRE ISLAND SUBSTATION NO. 1057

SOUTH PADRE ISLAND

TEXAS

138/12KV

GRADING PLAN

SECTIONS

SCALE: 1" = 30'

DR: CGV

ENG: JAL

CH: JAL

WO#: 42989562C1

APPD: JEH

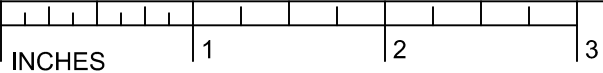
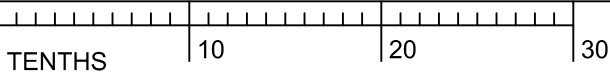
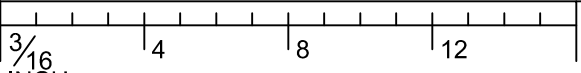
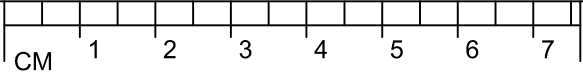
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COLUMBUS, OH 43215

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