

## **GENERAL RELEASE AND SETTLEMENT AGREEMENT**

This General Release and Settlement Agreement is made and entered into by and between Greater Edwards Aquifer Alliance; Bulverde Neighborhood Alliance; Shawn and Eddie Langford; Lennar Homes of Texas Land and Construction, Ltd.; Pape-Dawson Engineers, Inc.; SACC, Inc.; and Compliance Resources, Inc.

### **DEFINITIONS**

1. “GEAA” means Greater Edwards Aquifer Alliance, and without limitation, its subsidiary or parent companies, directors, predecessors, successors, agents, employees, and assigns.
2. “BNA” means Bulverde Neighborhood Alliance, and without limitation, its subsidiary or parent companies, directors, predecessors, successors, agents, employees, and assigns.
3. “The Langfords” means Shawn and Eddie Langford, and without limitation their heirs, devisees, legatees, descendants, spouses, beneficiaries, personal representatives, agents, and assigns.
4. “Lennar” means Lennar Homes of Texas Land and Construction, Ltd., and without limitation, its subsidiary or parent companies, affiliates, partners, associates, owners, members, investors, insurers, directors, predecessors, successors, agents, employees, and assigns.
5. “Pape-Dawson” means Pape-Dawson Engineers, Inc., and without limitation, its subsidiary or parent companies, affiliates, partners, associates, owners, members, investors, insurers, directors, predecessors, successors, agents, employees, and assigns.
6. “SACC” means SACC, Inc., and without limitation, its subsidiary or parent companies, affiliates, partners, associates, owners, members, investors, insurers, directors, predecessors, successors, agents, employees, and assigns.
7. “CRI” means Compliance Resources, Inc., and without limitation, its subsidiary or parent companies, affiliates, partners, associates, owners, members, investors, insurers, directors, predecessors, successors, agents, employees, and assigns.
8. “Agreement” or “Settlement Agreement” means this General Release and Settlement Agreement, which constitutes the full and final settlement of the Claims, as defined below.
9. “Parties” means GEAA, BNA, the Langfords, Lennar, Pape-Dawson, SACC, and CRI, as identified above.

10. "Claimants" means GEAA, BNA, and the Langfords, as identified above.

11. "Development" means the approximately 780-acre property located in Bulverde, Comal County, Texas, commonly known as 4S Ranch, on which Lennar is developing a master-planned community with the assistance of Pape-Dawson, SACC, and CRI.

12. "Effective Date" means the day on which all Claimants have returned an executed copy of this Agreement to Lennar, Pape-Dawson, SACC, and CRI.

13. "Claims" means all claims, demands, damages, charges, and causes of action accruing prior to the Effective Date, whether known or which could have been known with reasonable diligence, fixed or contingent, liquidated or unliquidated, that have been or could have been alleged by any of the Parties arising out of or related to the Development, whether sounding in contract, tort, statute, or other legal theory recognized by the law of any state or country, including but not limited to breach of contract, negligence, nuisance, trespass, injunctive relief, violations of the Texas Water Code, violations of the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*), mitigation costs, loss of use of personal and/or real property, litigation costs (including but not limited to attorneys' fees, engineering fees, and appraisal fees), actual damages, diminished property or rental value, stigma damages, exemplary and punitive damages, defense, indemnity, coverage as an additional insured, and contribution. Specifically excluded from the definition of "Claims" are (i) claims, damages, and causes of action arising from any failure to comply with this Agreement; and (ii) claims, damages, and causes of action to enforce this Agreement.

#### **RECITALS**

14. Claimants served a Citizen's Notice of Intent to Sue Pursuant to Federal Clean Water Act on Lennar relating to the Development alleging Lennar violated the Clean Water Act (33 U.S.C. §§ 1251, *et seq.*).

15. GEAA and BNA served a Notice of Default on Lennar alleging Lennar was in breach of a settlement agreement previously entered into on December 29, 2016 concerning the application of 622-4S, Ltd. and Stahl Lane, Ltd. for TCEQ Permit No. WQ0015095001 relating to the Development ("2016 Settlement Agreement").

16. The Langfords alleged Lennar was liable to them for damages arising in tort and/or the Texas Water Code relating to the Development.

17. Lennar served notices of duty to defend and indemnify on Pape-Dawson, SACC, and CRI asserting claims for defense and indemnity arising from the above-listed allegations expressed by GEAA, BNA, and the Langfords relating to the Development. In those notices, Lennar also demanded copies of insurance policies, including certificates and endorsements, which name Lennar and its subsidiaries as an insured, additional insured or named insured.

18. The Parties now desire to resolve all Claims which were or could have been asserted by and between them relating to the Development in order to limit the uncertainty that would accompany litigation on the merits and have accordingly agreed to resolve all of the issues between the Parties in accordance with this Agreement. Notwithstanding any other provision, this Agreement does not resolve claims which could not have been known with reasonable diligence prior to the Effective Date.

### **TERMS AND CONDITIONS**

For and in consideration of the covenants, consideration, and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

19. **Settlement Payments.**

a. Within 45 days from the date this Agreement has been signed by all other Parties and returned to Lennar, Lennar will pay to Claimants a cash settlement totaling \$57,500.00 ("Lennar's Settlement Payment"). Lennar's Settlement Payment will be delivered to Claimants' counsel in negotiable US funds in the form of one or more checks made payable to "Frederick, Perales, Allmon & Rockwell, P.C. Trust Account." From Lennar's Settlement Payment, GEAA will allocate \$25,000 for use in projects related to improving water quality of the Edwards Aquifer consistent with the provision of funds as a supplemental environmental project in resolution of the Clean Water Act claims.

b. Within 45 days from the date this Agreement has been signed by all other Parties and returned to Pape-Dawson, Pape-Dawson will pay to Claimants a cash settlement totaling \$43,750.00 ("Pape-Dawson's Settlement Payment"). Pape-Dawson's Settlement Payment will be delivered to Claimants' counsel in negotiable US funds in the form of one or more checks made payable to "Frederick, Perales, Allmon & Rockwell, P.C. Trust Account."

c. Within 45 days from the date this Agreement has been signed by all other Parties and returned to SACC, SACC will pay to Claimants a cash settlement totaling \$43,750.00 ("SACC's Settlement Payment"). SACC's Settlement Payment will be delivered to Claimants' counsel in negotiable US funds in the form of one or more checks made payable to "Frederick, Perales, Allmon & Rockwell, P.C. Trust Account."

d. Within 45 days from the date this Agreement has been signed by all other Parties and returned to CRI, CRI will pay to Claimants a cash settlement totaling \$30,000.00 ("CRI's Settlement Payment"). CRI's Settlement Payment will be delivered to Claimants' counsel in negotiable US funds in the form of one or more checks made payable to "Frederick, Perales, Allmon & Rockwell, P.C. Trust Account."

20. Allocation to Clean Water Act Allegations. Lennar and Claimants acknowledge and agree that \$50,000 of Lennar's Settlement Payment is specifically paid to settle the allegations raised against Lennar in Claimants' Citizen's Notice of Intent to Sue Pursuant to Federal Clean Water Act, dated October 30, 2019.

21. Relocation of Detention Pond Outlet. Lennar shall relocate the outlet of the Development's detention pond in accordance with the plans attached as Exhibits A-1 and A-2. GEAA and BNA agree that the design reflected in said plans complies with Subsection 3.06(a) of the 2016 Settlement Agreement.

22. Clean Water Act Settlement. Within 15 days of receiving Lennar's Settlement Payment, Claimants will simultaneously file executed copies of both the Clean Water Act complaint and draft consent decree attached hereto as Exhibits B and C, respectively.

23. Amendment to the 2016 Settlement Agreement. Except as amended in accordance with this paragraph, the 2016 Settlement Agreement remains fully effective and must be complied with. Within 15 days of receiving Lennar's Settlement Payment set forth in Paragraph 19, above, GEAA and BNA will execute the Second Amendment to 2016 Settlement Agreement, attached hereto as Exhibit D.

24. Release of Claims.

a. Upon Claimants' receipt of Lennar's Settlement Payment, Claimants unconditionally release, acquit, and forever discharge Lennar from the Claims.

b. Upon Claimants' receipt of Pape-Dawson's Settlement Payment, Claimants, Lennar, SACC, and CRI unconditionally release, acquit, and forever discharge Pape-Dawson from the Claims.

c. Upon Claimants' receipt of SACC's Settlement Payment, Claimants, Lennar, Pape-Dawson, and CRI unconditionally release, acquit, and forever discharge SACC from the Claims.

d. Upon Claimants' receipt of CRI's Settlement Payment, Claimants, Lennar, Pape-Dawson, and SACC unconditionally release, acquit, and forever discharge CRI from the Claims.

25. No Assignment. The Parties represent that they have not conveyed, sold, assigned, encumbered or otherwise transferred to any third party any portion of the claims being released, discharged, or dismissed by virtue of this Agreement. The Parties represent they are the lawful owners of all claims released by this Agreement, and they have not assigned, pledged, or in any other manner sold or transferred any right, title, or interest in such claims.

26. Representations and Warrants of Authority. The Parties represent and warrant that: (1) they are represented by counsel in entering this Agreement; (2) the signatories to this Agreement each has full legal right, power, and authority to execute this Agreement on behalf of the party represented; (3) they have read the Agreement; and (4) they are not relying on any representations not contained in this Agreement.

27. Merger Clause. It is the express intent of the Parties that this Settlement Agreement shall constitute the entire agreement of the Parties and shall constitute a global release of all Claims, and that the Claims are hereby settled for good and valuable consideration.

28. Voluntary Agreement. The Parties acknowledge that each has had an opportunity to consult with their respective attorneys concerning the meaning, import, and legal significance of this Agreement, and each has read this Agreement, as signified by their signatures hereto, and are voluntarily executing the same after advice of counsel for the purposes and considerations herein expressed.

29. No Admission of Liability. Nothing contained herein shall be deemed to be or construed as an admission of liability by any Party with respect to the Claims or otherwise. Rather, this Agreement is made in good faith and in order to reasonably and conclusively resolve the disputed issues and claims between the Parties in view of the inherent uncertainty and expense of litigation on the merits.

30. Expenses. Except as provided otherwise in this Agreement, each Party shall bear its own attorney's fees, expenses, and costs arising from the Claims, this Agreement, the matters and documents referred to herein, and all related matters. The Parties understand and acknowledge that they will have the obligation to fulfill or pay any interest, fees, costs, expenses, and/or claims made by any attorney representing them.

31. Choice of Law and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of Texas.

32. Jointly Drafted. This Agreement has been reviewed by counsel for the Parties and approved as to form and content. Accordingly, this Agreement shall be deemed to have been jointly drafted by the Parties for the purposes of applying any rule of construction to the effect that ambiguities are to be construed against the drafting party.

33. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and to their respective representatives, successors, and assigns.

34. Copies. It is understood and agreed that this Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

35. Additional Documents and Cooperation. The Parties agree to execute such additional documents as may be necessary to effectuate the terms of this Agreement.

36. Entire Agreement. This Agreement sets forth the entire understandings of the Parties concerning the subject matter hereof and supersedes any prior agreements, if any, made between the Parties relative to such subject matter. No oral understandings, statements, promises, or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally.

37. Savings Clause. If any provision of this Settlement Agreement is or may be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall nevertheless survive and continue in full force and effect without being impaired or invalidated in any way.

38. **IN WITNESS THEREOF**, the Parties have executed and delivered this Agreement to be effective as of the last date of signature below.

*Signature page to follow*



\_\_\_\_\_  
Greater Edwards Aquifer Alliance  
By: Annalisa Peace  
Date: 6/5/2020

\_\_\_\_\_  
Bulverde Neighborhood Alliance  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

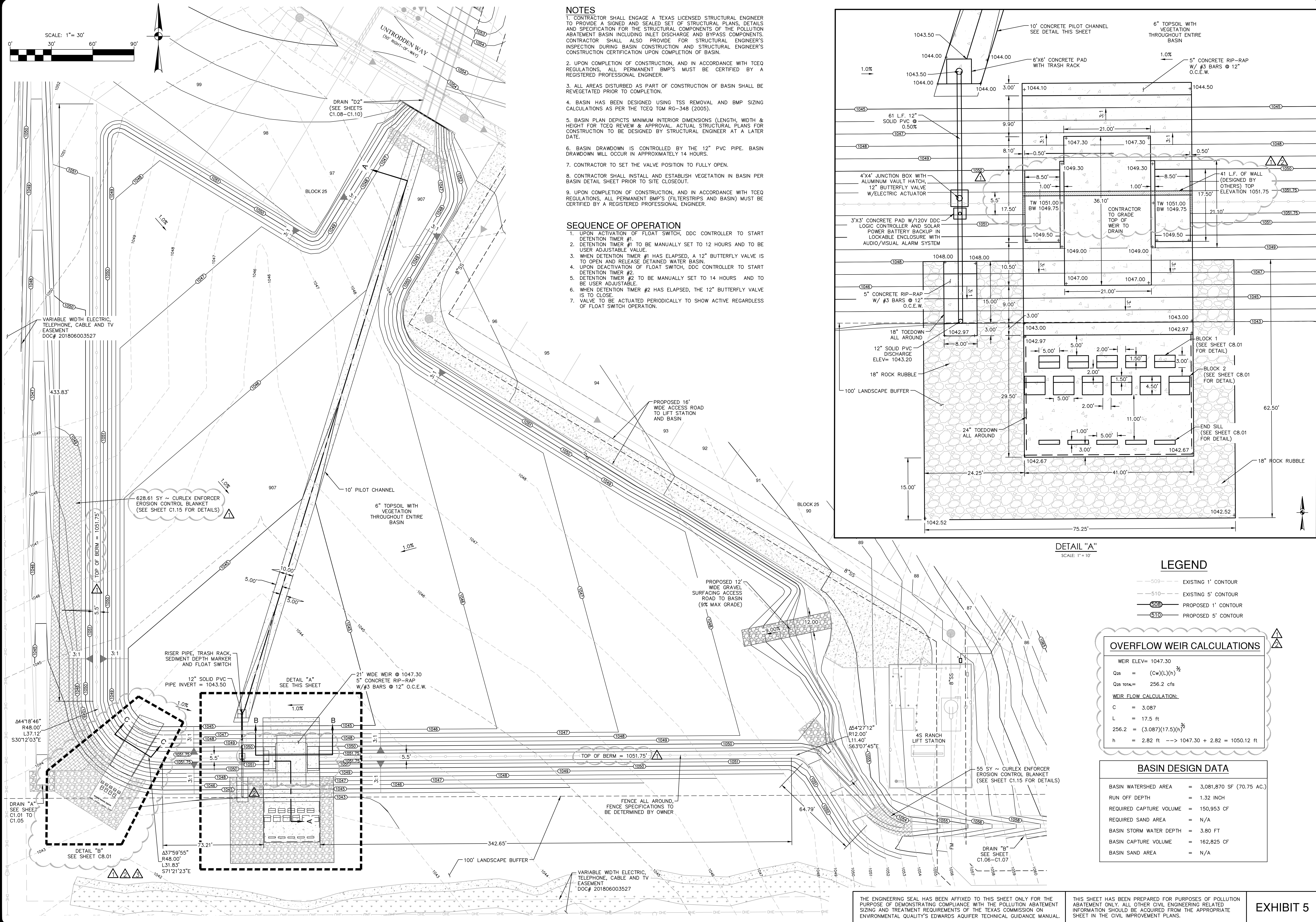
\_\_\_\_\_  
Shawn and Eddie Langford  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Lennar Homes of Texas Land and Construction, Ltd.  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Pape-Dawson Engineers, Inc.  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

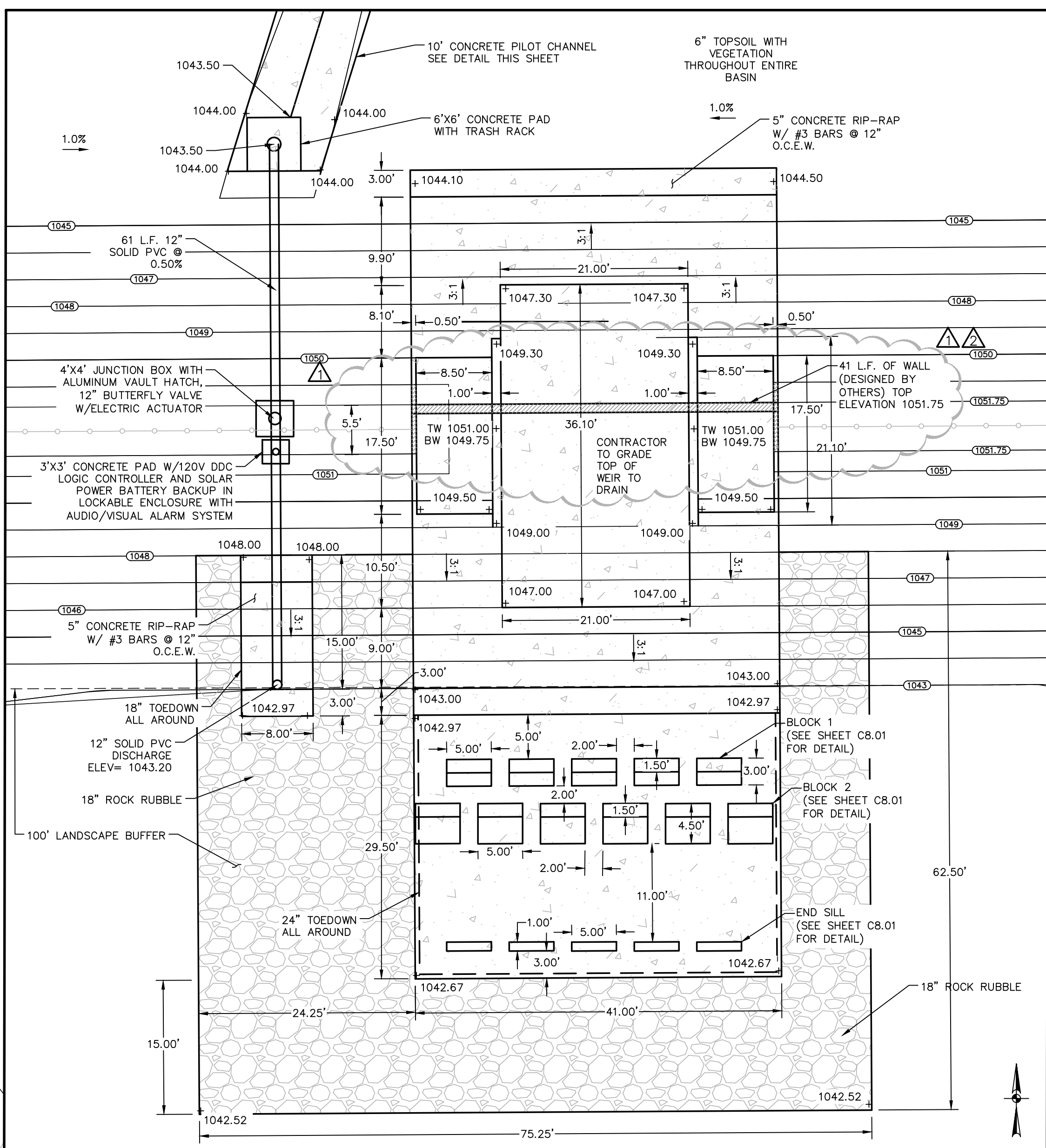
\_\_\_\_\_  
SACC, Inc.  
By: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Compliance Resources, Inc.  
By: \_\_\_\_\_  
Date: \_\_\_\_\_



- ### NOTES
- CONTRACTOR SHALL ENGAGE A TEXAS LICENSED STRUCTURAL ENGINEER TO PROVIDE A SIGNED AND SEALED SET OF STRUCTURAL PLANS, DETAILS AND SPECIFICATION FOR THE STRUCTURAL COMPONENTS OF THE POLLUTION ABATEMENT BASIN INCLUDING INLET DISCHARGE AND BYPASS COMPONENTS. CONTRACTOR SHALL ALSO PROVIDE FOR STRUCTURAL ENGINEER'S INSPECTION DURING BASIN CONSTRUCTION AND STRUCTURAL ENGINEER'S CONSTRUCTION CERTIFICATION UPON COMPLETION OF BASIN.
  - UPON COMPLETION OF CONSTRUCTION, AND IN ACCORDANCE WITH TCEQ REGULATIONS, ALL PERMANENT BMP'S MUST BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER.
  - ALL AREAS DISTURBED AS PART OF CONSTRUCTION OF BASIN SHALL BE REVEGETATED PRIOR TO COMPLETION.
  - BASIN HAS BEEN DESIGNED USING TSS REMOVAL AND BMP SIZING CALCULATIONS AS PER THE TCEQ TGM RG-348 (2005).
  - BASIN PLAN DEPICTS MINIMUM INTERIOR DIMENSIONS (LENGTH, WIDTH & HEIGHT FOR TCEQ REVIEW & APPROVAL. ACTUAL STRUCTURAL PLANS FOR CONSTRUCTION TO BE DESIGNED BY STRUCTURAL ENGINEER AT A LATER DATE.
  - BASIN DRAWDOWN IS CONTROLLED BY THE 12" PVC PIPE. BASIN DRAWDOWN WILL OCCUR IN APPROXIMATELY 14 HOURS.
  - CONTRACTOR TO SET THE VALVE POSITION TO FULLY OPEN.
  - CONTRACTOR SHALL INSTALL AND ESTABLISH VEGETATION IN BASIN PER BASIN DETAIL SHEET PRIOR TO SITE CLOSEOUT.
  - UPON COMPLETION OF CONSTRUCTION, AND IN ACCORDANCE WITH TCEQ REGULATIONS, ALL PERMANENT BMP'S (FILTERSTRIPS AND BASIN) MUST BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER.

- ### SEQUENCE OF OPERATION
- UPON ACTIVATION OF FLOAT SWITCH, DDC CONTROLLER TO START DETENTION TIMER #1.
  - DETECTION TIMER #1 TO BE MANUALLY SET TO 12 HOURS AND TO BE USER ADJUSTABLE VALUE.
  - WHEN DETENTION TIMER #1 HAS ELAPSED, A 12" BUTTERFLY VALVE IS TO OPEN AND RELEASE DETAINED WATER BASIN.
  - UPON DEACTIVATION OF FLOAT SWITCH, DDC CONTROLLER TO START DETENTION TIMER #2.
  - DETECTION TIMER #2 TO BE MANUALLY SET TO 14 HOURS AND TO BE USER ADJUSTABLE.
  - WHEN DETENTION TIMER #2 HAS ELAPSED, THE 12" BUTTERFLY VALVE IS TO CLOSE.
  - VALVE TO BE ACTUATED PERIODICALLY TO SHOW ACTIVE REGARDLESS OF FLOAT SWITCH OPERATION.



DETAIL "A"  
SCALE: 1" = 10'

- ### LEGEND
- 509--- EXISTING 1' CONTOUR
  - 510--- EXISTING 5' CONTOUR
  - 509--- PROPOSED 1' CONTOUR
  - 510--- PROPOSED 5' CONTOUR

### OVERFLOW WEIR CALCULATIONS

WEIR ELEV= 1047.30

$$Q_{25} = (C_w)(L)(h)^{3/2}$$

$Q_{25} \text{ TOTAL} = 256.2 \text{ cfs}$

WEIR FLOW CALCULATION:

$C = 3.087$

$L = 17.5 \text{ ft}$

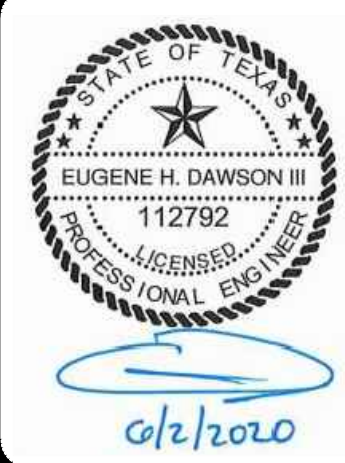
$$256.2 = (3.087)(17.5)(h)^{3/2}$$

$h = 2.82 \text{ ft} \rightarrow 1047.30 + 2.82 = 1050.12 \text{ ft}$

### BASIN DESIGN DATA

BASIN WATERSHED AREA	= 3,081,870 SF (70.75 AC.)
RUN OFF DEPTH	= 1.32 INCH
REQUIRED CAPTURE VOLUME	= 150,953 CF
REQUIRED SAND AREA	= N/A
BASIN STORM WATER DEPTH	= 3.80 FT
BASIN CAPTURE VOLUME	= 162,825 CF
BASIN SAND AREA	= N/A

NO.	REVISION	DATE
1	CLOSE OFF EXISTING WEIR W/ WALL, RAISE POND BERM ELEVATION, ADD NEW WEIR	10/8/19
2	REVISED FENCE, ROCK RUBBLE CALCULATIONS AND WALL	10/31/19
3	REVISED WEIR LOCATION AND ROCK RUBBLE	6/2/2020



**PAPE-DAWSON ENGINEERS**  
 SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
 2000 HW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
 TPE FIRM REGISTRATION #270 | TPE FIRM REGISTRATION #1008880

**4S RANCH PHASE 3, UNIT-4D, COMAL CO. WCID NO.6**  
 BULVERDE, TEXAS  
 BATCH DETENTION BASIN D

PLAT NO.	
JOB NO.	8547-38
DATE	JANUARY 2019
DESIGNER	DW
CHECKED	BS DRAWN JR
SHEET	C8.00

THE ENGINEERING SEAL HAS BEEN AFFIXED TO THIS SHEET ONLY FOR THE PURPOSE OF DEMONSTRATING COMPLIANCE WITH THE POLLUTION ABATEMENT SIZING AND TREATMENT REQUIREMENTS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY'S EDWARDS AQUIFER TECHNICAL GUIDANCE MANUAL.

THIS SHEET HAS BEEN PREPARED FOR PURPOSES OF POLLUTION ABATEMENT ONLY. ALL OTHER CIVIL ENGINEERING RELATED INFORMATION SHOULD BE ACQUIRED FROM THE APPROPRIATE SHEET IN THE CIVIL IMPROVEMENT PLANS.

EXHIBIT 5



**GRADING AND DRAINAGE GENERAL NOTES:**

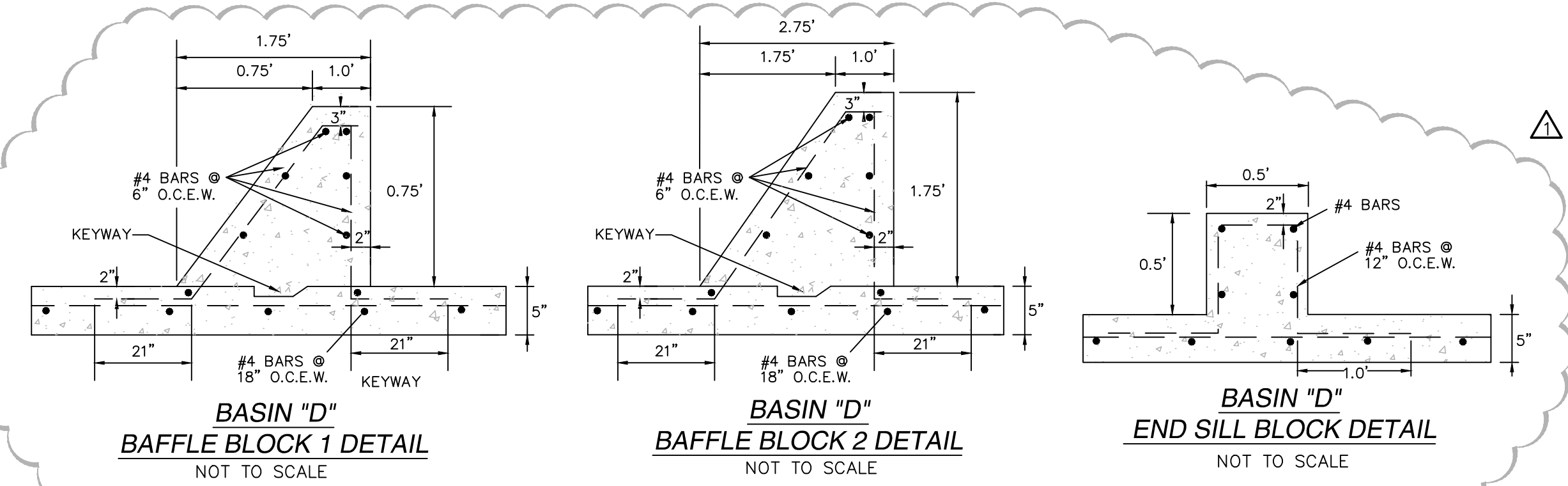
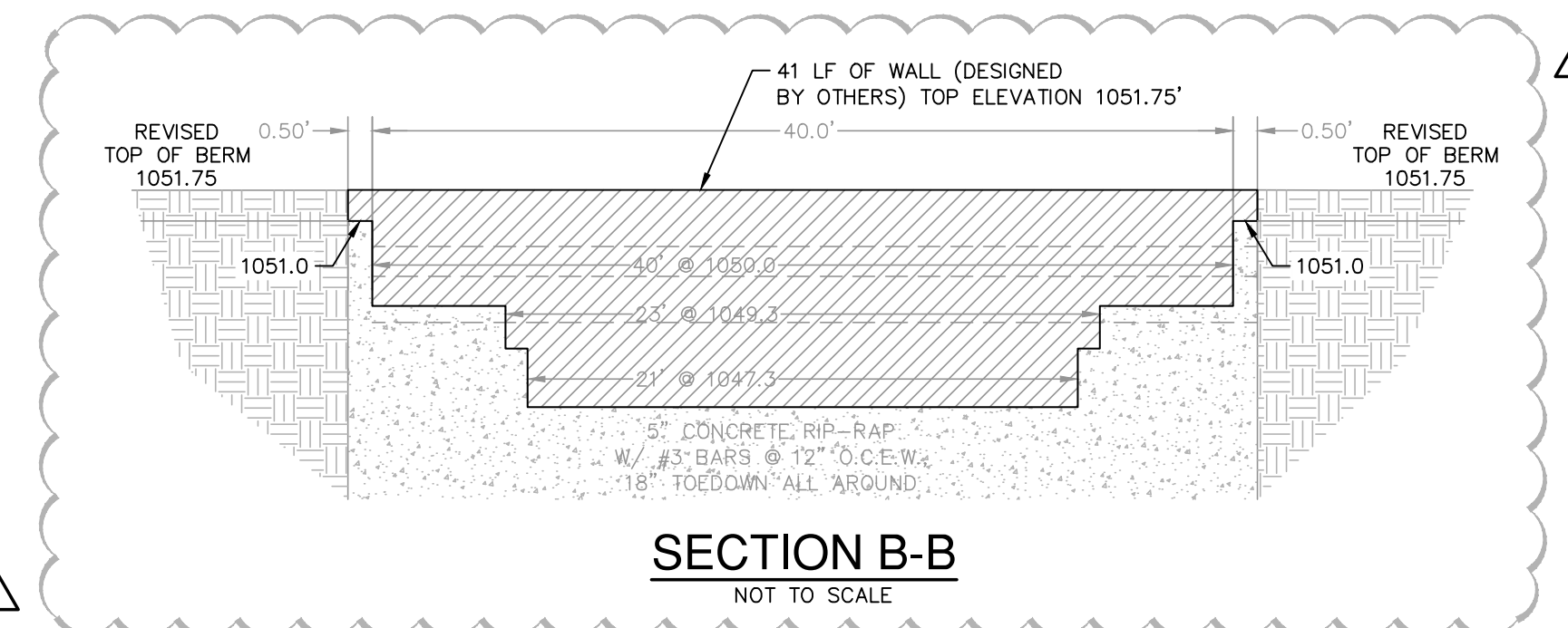
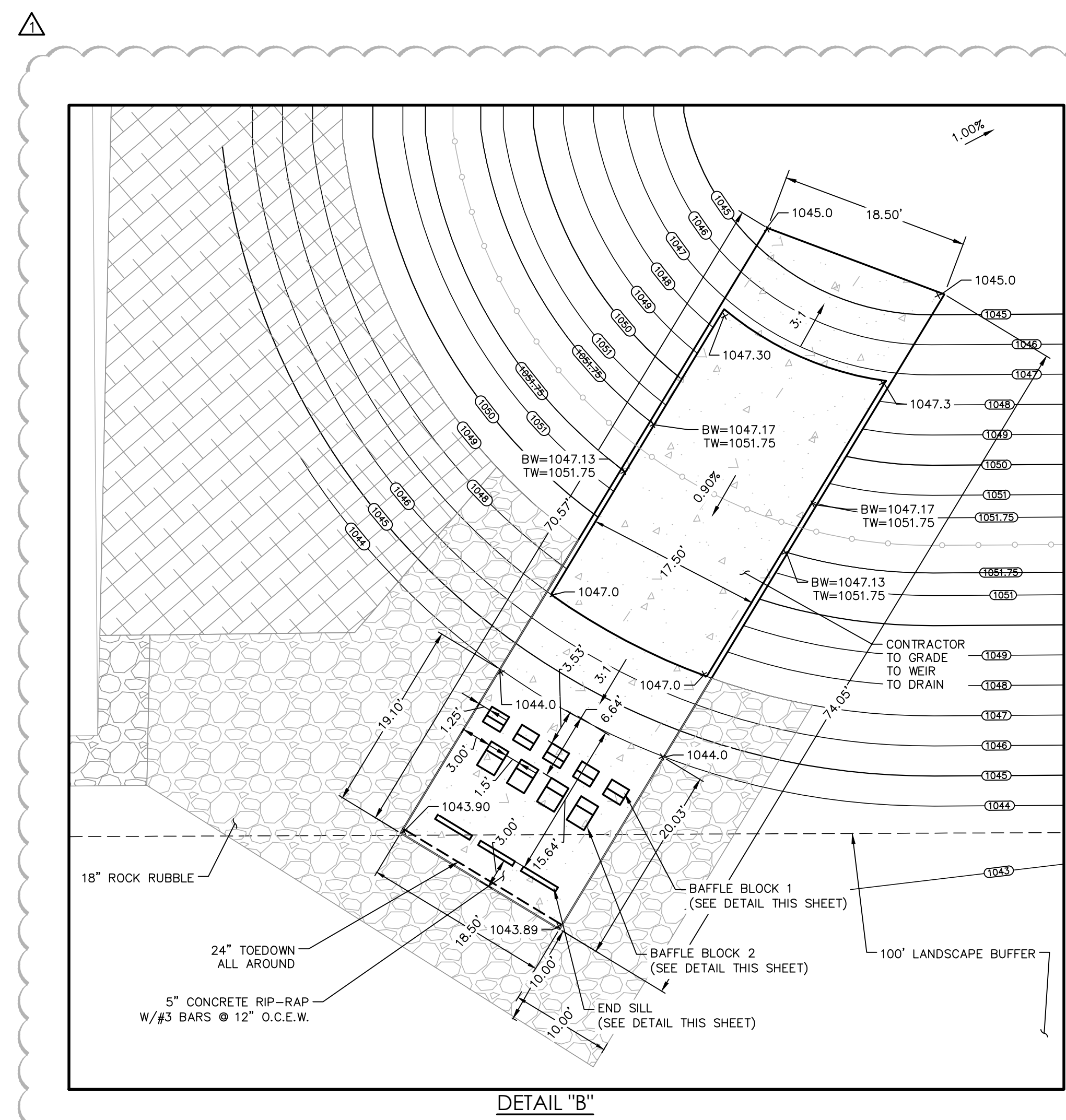
- ALL GRADES AND CONTOURS SHOWN ARE FINAL, TOP OF FINISHED SURFACE ELEVATIONS.
- POSITIVE DRAINAGE SHALL BE MAINTAINED ON ALL SURFACE AREAS WITHIN THE SCOPE OF THIS PROJECT. CONTRACTOR SHOULD TAKE PRECAUTIONS NOT TO ALLOW PONDING OF WATER.
- NO ABRUPT CHANGE OF GRADE SHALL OCCUR.
- ALL DISTURBED AREAS SHALL BE REVEGETATED, BY THE CONTRACTOR, IN ACCORDANCE WITH PROJECT SPECIFICATIONS AND LANDSCAPING PLANS.
- THE CONTRACTOR WILL BE RESPONSIBLE FOR DETERMINING EXACT LOCATION OF ALL UTILITIES AND DRAINAGE STRUCTURES WHETHER SHOWN ON THE PLANS OR NOT. THE CONTRACTOR SHALL UNCOVER EXISTING UTILITIES PRIOR TO CONSTRUCTION TO VERIFY SIZE, GRADE, AND LOCATION. THE CONTRACTOR SHALL NOTIFY THE ENGINEER IMMEDIATELY OF ANY DEVIATIONS FROM PLANS PRIOR TO BEGINNING CONSTRUCTION. ANY DAMAGE TO EXISTING UTILITIES, WHETHER SHOWN ON THE PLANS OR NOT, SHALL BE THE CONTRACTORS RESPONSIBILITY TO REPAIR, AT HIS EXPENSE.
- ALL MATERIALS AND CONSTRUCTION PROCEDURES WITHIN THE SCOPE OF THIS CONTRACT WHERE NOT SPECIFICALLY COVERED IN THE PROJECT SPECIFICATIONS SHALL CONFORM TO ALL APPLICABLE CITY OF SAN ANTONIO SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION.
- CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING TO ORIGINAL, OR BETTER CONDITION, TO ANY DAMAGES DONE TO EXISTING BUILDINGS, UTILITIES, PAVEMENT, CURBS, SIDEWALKS OR DRIVEWAYS.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR COORDINATING WITH ALL NECESSARY UTILITY COMPANIES FOR PROVIDING TEMPORARY UTILITY SERVICES DURING CONSTRUCTION.
- THE CONTRACTOR SHALL SAW CUT EXISTING PAVEMENT AT NEW PAVEMENT AND CURB JUNCTURES. NO JAGGED OR IRREGULAR CUTS IN PAVEMENT WILL BE ALLOWED OR ACCEPTED.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR ACQUIRING ALL PERMITS, TESTS, APPROVALS, AND ACCEPTANCES REQUIRED TO COMPLETE CONSTRUCTION OF THIS PROJECT.
- ALL EXCAVATION IS UNCLASSIFIED.
- SEE CIVIL DETAIL SHEETS FOR APPLICABLE DETAILS.
- REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL SPECIFICATIONS AND CONTRACT INFORMATION.
- REFER TO GEOTECHNICAL REPORT FOR SUBSURFACE INFORMATION AND CONSTRUCTION INFORMATION.
- ALL PROPOSED SPOT ELEVATIONS HAVE BEEN TRUNCATED TO SAVE SPACE ON THIS PLAN.

**CONTRACTOR NOTES:**

- CONTRACTOR IS ADVISED THAT TCEQ DOES NOT ALLOW CHANGES TO PERMANENT POLLUTION ABATEMENT MEASURES WITHOUT THEIR PRIOR APPROVAL.
- CONTRACTOR SHALL NOTIFY CERTIFYING ENGINEER WHEN BASIN CONSTRUCTION HAS PROCEEDED TO THE FOLLOWING MILESTONES:
  - REINFORCING STEEL FOR BASIN WALL OR RIPRAP LINER HAS BEEN SET. CONCRETE HAS NOT BEEN PLACED AND DRAIN PIPE IS IN PLACE. WHERE EPDM LINER IS USED, CONTRACTOR SHALL PROVIDE ENGINEER WITH SURVEY DATA WHICH DEMONSTRATES THE LINER HAS BEEN SET AT PROPER ELEVATION AND GRADE.
  - CONCRETE RIPRAP OR EPDM LINER IS IN PLACE AND UNDER-DRAIN SYSTEM IS IN PLACE WITHOUT GRAVEL.
  - BASIN HAS BEEN COMPLETELY FINISHED INCLUDING SOD OR SEED PLACEMENT ON SIDE SLOPES (WHERE APPLICABLE).
- WORK SHALL NOT CONTINUE ON THE BASIN UNTIL THE ENGINEER HAS HAD AN OPPORTUNITY TO OBSERVE THE STATUS OF CONSTRUCTION AT EACH STAGE. CONTRACTOR SHALL PROVIDE ENGINEER A MINIMUM OF 24 HOURS ADVANCE NOTICE PRIOR TO TIME THE BASIN WILL BE AT THE REQUIRED STAGE.
- UPON SUBSTANTIAL COMPLETION, OR AS REQUESTED BY ENGINEER, CONTRACTOR TO PROVIDE CERTIFYING ENGINEER WITH FIELD SHOTS VERIFYING ELEVATIONS OF THE FOLLOWING:
  - TOP OF BANK/WALL AT EACH CORNER OF BASIN
  - TOE OF SLOPE AT EACH CORNER OF BASIN (INSIDE BASIN TOE)
  - SPLASH PAD/INLET PIPES
  - OVERFLOW WEIRS
- BEFORE FINAL ACCEPTANCE OF CONSTRUCTION BY THE OWNER, THE CONTRACTOR WILL REMOVE ALL TRASH, DEBRIS, AND ACCUMULATED SILT FROM THE BASINS AND REESTABLISH THEM TO THE PROPER OPERATING CONDITION.

**NOTES:**

- CONTRACTOR SHALL INSTALL AND ESTABLISH VEGETATION IN BASIN PER BASIN DETAIL SHEET PRIOR TO SITE CLOSEOUT.
- UPON COMPLETION OF CONSTRUCTION, AND IN ACCORDANCE WITH TCEQ REGULATIONS, ALL PERMANENT BMP'S (FILTERSTRIPS AND BASIN) MUST BE CERTIFIED BY A REGISTERED PROFESSIONAL ENGINEER.



REVISED BAFFLE BLOCK DETAILS FOR 17.5' WEIR OUTFALL SECTION C-C

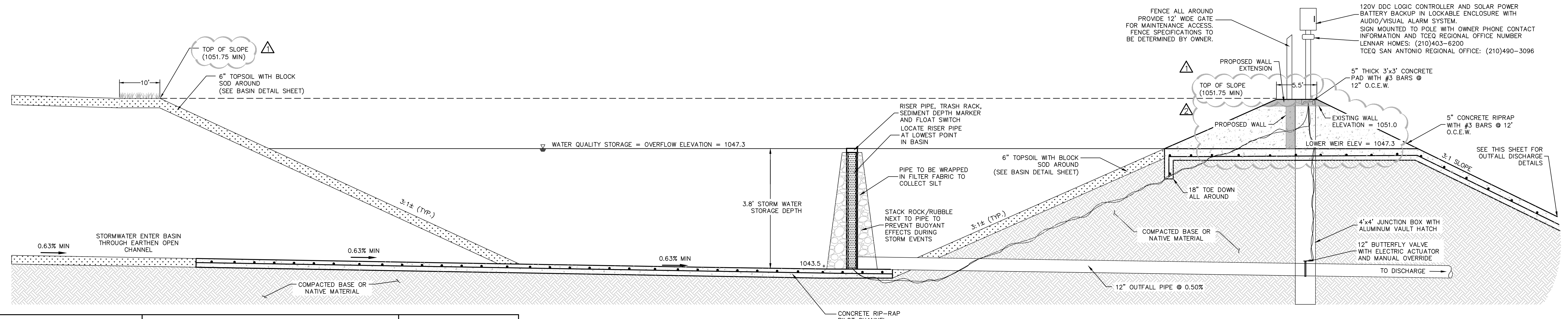
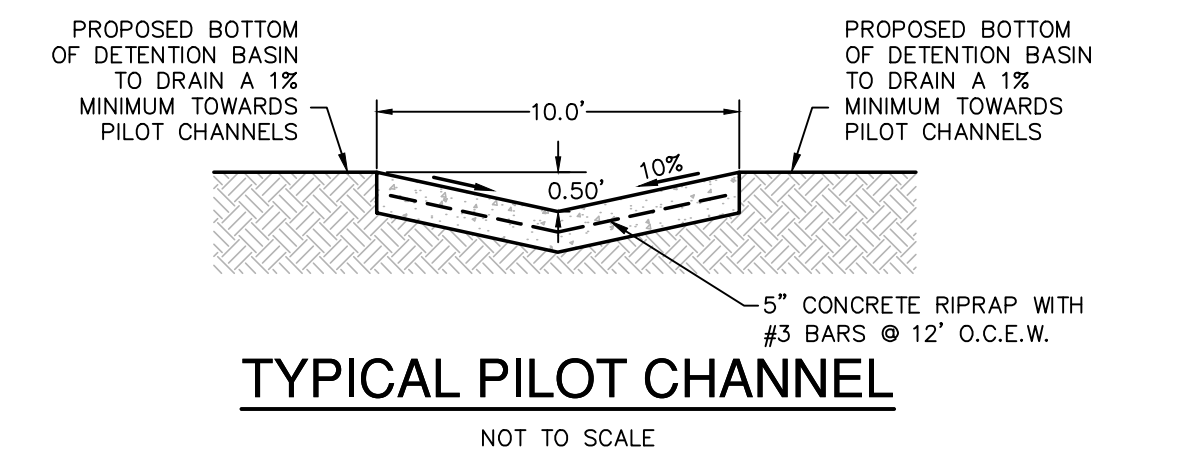
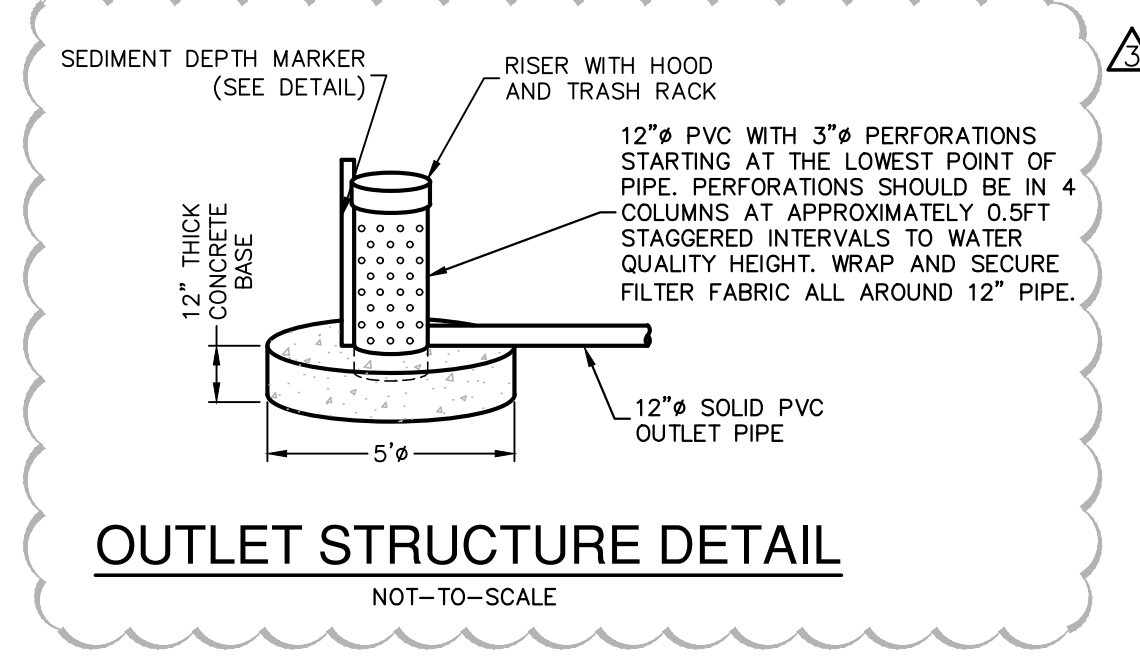
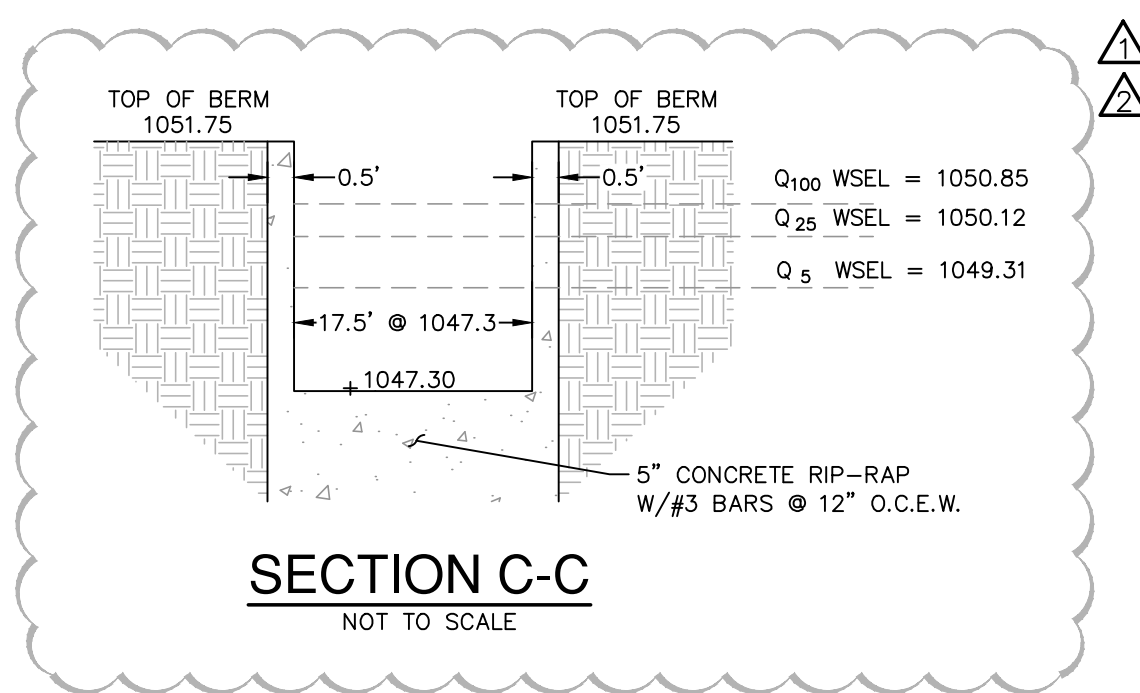


EXHIBIT 5

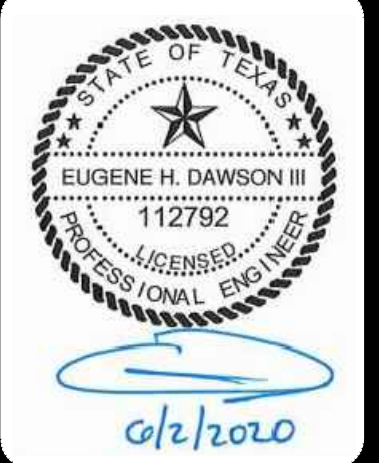
SECTION "A-A"  
N.T.S.

Date: Jun 02, 2020 3:15pm User: ID: bspengler File: P:\851427\381\Drawings\DWG\B4654728.dwg

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NO.	REVISION	DATE
1	CLOSE OFF EXISTING WEIR W/ WALL, RAISE POND BERM ELEVATION, ADD NEW WEIR	10/8/19
2	REVISED FENCE, ROCK RUBBLE CALCULATIONS AND WALL	10/31/19
3	REVISED PERMANENT RISER PIPE FROM CMP TO PVC	2/21/2020
4	REVISED WEIR LOCATION AND ROCK RUBBLE	6/2/2020



**PAPE-DAWSON ENGINEERS**  
SAN ANTONIO | AUSTIN | HOUSTON | FORT WORTH | DALLAS  
2000 HW LOOP 410 | SAN ANTONIO, TX 78213 | 210.375.9000  
TBP# FIRM REGISTRATION #470 | TBP#S FIRM REGISTRATION #1008880

**4S RANCH PHASE 3, UNIT-4D, COMAL CO., WCID NO.6**  
BULVERDE, TEXAS  
BATCH DETENTION BASIN DETAILS

PLAT NO.	
JOB NO.	8547-38
DATE	JANUARY 2019
DESIGNER	DW
CHECKED	BS DRAWN JR
SHEET	C8.01

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

GREATER EDWARDS AQUIFER	)	
ALLIANCE, <i>et al.</i> ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____.
	)	
LENNAR HOMES OF TEXAS	)	
LAND AND CONSTRUCTION, LTD.,	)	
	)	
Defendant.	)	

**COMPLAINT**

Plaintiffs Greater Edwards Aquifer Alliance (“GEAA”), Bulverde Neighborhood Alliance, and Shawn and Eddie Langford (referred to herein collectively as “Plaintiffs”) by and through their counsel, alleges as follows:

1. This is a citizen suit brought suit under Section 505(a) of the Clean Water Act (“CWA”) against Lennar Homes of Texas Land and Construction, Ltd. (“Lennar”) based on its development of “4S Ranch,” which is comprised of approximately 775 acres of land proposed to be used for a combination of commercial and residential purposes (the “Development”). This property is immediately northwest of the City of Bulverde, Texas.

2. Plaintiffs seek a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorneys’ and expert witness fees, for Lennar’s violations of the CWA.

**JURISDICTION AND VENUE**

3. This Court has subject matter jurisdiction over the parties and subject matter of this

action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331, and 28 U.S.C. § 2201

4. On October 30, 2019, as required by the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiffs provided notice of intent to file suit against Lennar for CWA violations (“Notice Letter”) to Lennar and the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of EPA Region VI; the Attorney General of the United States, the Chairman, Commissioners, and Executive Director of the Texas Commission on Environmental Quality (“TCEQ”) (collectively “state and federal agencies.”)

5. The Notice Letter provided Lennar with sufficient information to determine: (i) the CWA requirements GEAA alleges Lennar violated; (ii) the activity alleged to constitute the violation(s); (iii) sufficient information to determine the date, location, and person responsible for the violation(s); and (iv) the contact information for Plaintiff and Plaintiff’s Counsel. A copy of the Notice Letter is attached as Exhibit 1.

6. More than sixty (60) days have passed since notice of the alleged violation was served upon Lennar and the state and federal agencies. Neither the EPA nor the state of Texas has commenced or is diligently prosecuting a court action to redress the violations alleged herein. No claim in this action is barred by any prior administrative action pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

7. Venue is proper in the Western District of Texas pursuant to Section 505(c)(1) of the CWA and 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

## **PARTIES**

8. Lennar is participating in the Development, which commenced in or about March 19, 2018. Lewis Creek drains central portions of the Development, while certain Western portions of the Development drain into a tributary of Lewis Creek.

9. GEAA is a nonprofit membership association of the State of Texas that promotes the protection and preservation of the Edwards Aquifer, as well as its springs, watersheds, and the Texas Hill Country that sustains it.

10. Bulverde Neighborhood Alliance is an organization that seeks to protect the air, land, and water of the Bulverde area, as well as any areas impacted by its land development.

11. Shawn and Eddie Langford reside at 4385 High Noon Drive, Bulverde, Texas. They are the trustees of the Eddie and Shawn Langford Revocable Trust, which owns roughly 15 acres at that location upon which the Langfords reside (the “Langford Property”). Under both natural and developed conditions, certain western areas of the Development drain onto the Langford Property, thence to Lewis Creek.

12. Additionally, Plaintiffs act in the interest of the general public to prevent pollution of the Edwards Aquifer, Lewis Creek, and related waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

## **THE CLEAN WATER ACT**

13. Congress enacted the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To achieve this goal, the Act prohibits “the discharge of any pollutant” into navigable waters, except as authorized by the CWA.

33 U.S.C. § 1311(a).

14. The CWA establishes the National Pollutant Discharge Elimination System (“NPDES”) under which the Administrator of the EPA or an authorized State can issue NPDES permits, which allow the lawful discharge of pollutants subject to certain conditions. 33 U.S.C. § 1342. In Texas, the TCEQ has the authority to issue NPDES permits through the TPDES permitting program.

15. TPDES permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements, in order to improve the cleanliness and safety of the Nation’s waters. Each violation of a TPDES permit violates the CWA and is grounds for enforcement action. 33 U.S.C. §§ 1311(a), 1365(f).

16. The holder of a TPDES permit is subject to both federal and state enforcement action for failure to comply with the limitations imposed in the permit. 33 U.S.C. §§ 1319, 1342.

17. Clean Water Act § 402(p) (33 U.S.C. 1342(p)) requires permits for stormwater discharges from either industrial or municipal activities. The EPA has implemented this requirement by the promulgation of 40 Code of Federal Regulations (“C.F.R.”) § 122.26.

18. A storm water discharge associated with industrial activity is defined in these regulations, at 40 CFR § 122.26(b)(14)(x), to include construction activity disturbing more than five acres. The regulation explicitly provides that this includes clearing, grading and excavation activities. Application requirements for storm water discharges associated with industrial activity, including construction activities disturbing more than five acres, are established at 40 CFR § 122.26(c).

19. The Clean Water Act at § 301(a) (33 U.S.C. 1311) establishes that no discharge of

pollutants into a water of the United States is allowed except in compliance with the requirements of that Act, including the requirements of CWA § 402 (33 U.S.C. § 1342).

20. Thus, the requirements of authorizations contained in a general permit are enforceable through a citizen suit under § 505 (33 USC § 1365) of the federal Clean Water Act.

21. Lennar holds Registration No. TXR15216K for construction at the site of the Development, under Texas Construction Activities General Permit TXR150000 “General Permit.”

22. The requirement that a permittee develop and implement a stormwater pollution prevention plan (“SWPPP”), set forth at Part III of TXR150000, is one of the federally enforceable terms of the General Permit issued under TCEQ’s delegated authority to implement CWA § 402(p).

23. Among other requirements, the General Permit requires that the permittee design, install, and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants as the result of construction activities.<sup>1</sup> To this end, the General Permit requires the development of a SWPPP, which must be implemented prior to commencing construction activities that result in soil disturbance.<sup>2</sup> All protective measures in the SWPPP must be maintained in effective working condition.<sup>3</sup>

24. For activities disturbing more than ten acres at a time, the SWPPP must include a sedimentation basin providing sufficient storage to contain the volume of runoff from a 2-year, 24-hour storm event from each disturbed acre drained.<sup>4</sup> Furthermore, controls must be developed

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<sup>1</sup> TXR150000, Condition III(G)(1).

<sup>2</sup> TXR150000, Condition III(C).

<sup>3</sup> TXR150000, Condition III(F)(6)(a).

<sup>4</sup> TXR150000, Condition III(F)(2)(c)(i)(A)(1).

to minimize the offsite transport of litter, construction debris, and construction materials.<sup>5</sup> Disturbed areas must be stabilized where earth disturbing activities have either ended, or temporarily ceased for more than fourteen days.<sup>6</sup>

### **CWA CITIZEN ENFORCEMENT**

25. The CWA authorizes any citizen to file a civil action to enforce an effluent standard in an NPDES (or TPDES) permit, subject to certain limitations. 33 U.S.C. § 1365(a)(b).

26. Subsection (a) of the citizen suit provision, entitled “Authorization; jurisdiction,” instructs: “Except as provided in subsection (b) of this section..., any citizen may commence a civil action on his own behalf... against any person... who is alleged to be in violation of... an effluent standard or limitation under this chapter.” 33 U.S.C. § 1365(a)(1).

27. The CWA defines the term “an effluent standard or limitation under this chapter” to mean, among other things, “a permit or condition thereof issued under, which is in effect under [section 402 of the CWA].” 33 U.S.C. § 1365(f).

28. CWA section 505, 33 U.S.C. § 1365, empowers citizens to seek remedies for unpermitted discharges violating Section 301 of the CWA, 33 U.S.C. § 1311, and for violations of NPDES permit conditions. This section also authorizes citizens to seek injunctive relief.

29. For violations occurring and assessed after January 15, 2019, each separate violation of the CWA subjects the violator to a penalty of up to \$54,833 per day per violation, pursuant to sections 309(d) and 505(a) of the CWA. 33 U.S.C. §§ 1319(d), 1365(a), and 40 C.F.R. § 19.4 (2009) (Adjustment of Civil Monetary Penalties for Inflation).

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<sup>5</sup> TXR150000, Condition III(F)(2)(a)(iii).

<sup>6</sup> TXR150000, Condition III(G)(2).

## **FACTUAL BACKGROUND**

30. Immediately adjacent to the Langford Property, Lennar has constructed a detention pond that concentrates runoff from certain western portions of the Development (herein referenced as “Detention Basin D”). This basin now directs runoff from the Development onto the Langford Property. The contributing areas to that pond include areas where construction activities were occurring as of October 24, 2019, and continue to occur.

31. On May 8, 2019, a rainfall event occurred which resulted in the runoff of storm water from the Development in Lewis Creek. This storm water escaping the Development contained significant quantities of suspended solids.

32. More recently, on October 24, 2019, a precipitation event occurred at the Development. As a result of this event, approximately 4.1 inches of rain fell within the span of less than six hours. Based upon the National Oceanic and Atmospheric Administration (“NOAA”) Atlas 14, this rainfall event was roughly equivalent to the magnitude of the 2-year, 24-hour storm event for this location.<sup>7</sup>

33. As a result of this rainfall event, significant quantities of storm water runoff, containing a large amount of sediment, escaped the Development. Much of this escaping sediment consequently impacted water features on the Langford Property, and was deposited upon broad areas of the Langford Property, as illustrated in the photographs below.

34. Additionally, in violation of the General Permit, disturbed soils in significant areas of the Development have not been stabilized despite the cessation of soil disturbance in those areas

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<sup>7</sup> [https://hdsc.nws.noaa.gov/hdsc/pfds/pfds\\_map\\_cont.html?bkmrk=ne](https://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=ne) , at 29.765555° N, 98.391944° W.



for more than fourteen days. Likewise, construction debris and litter has been deposited upon the Langford property as a result of construction activities at the Development, and runoff from the Development.

35. Photographs of the impacts of the rain events are provided in Exhibit 1.

### **ALLEGED CWA VIOLATIONS**

36. Lennar has violated CWA § 301 by discharging pollutants in violation of General Permit TXR150000, and continues to be in violation of that section. Violations include:

- a. March 19, 2018 to present – Lennar failed to develop a SWPPP prior to the commencement of construction that minimizes to the extent practicable the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges, Condition III;
- b. March 19, 2018 to present – Lennar commenced construction activities resulting in soil disturbance prior to implementation of SWPPP, Condition III(C);
- c. May 8, October 24, and October 25, 2019, with likely recurrence upon subsequent rainfall events – Lennar failed to adequately contain rainfall on site resulting from a 2-year, 24- hour storm event, Condition III(F)(2)(c)(i)(A)(1);
- d. May 8, October 24, and October 25, 2019, with likely recurrence upon subsequent rainfall events – Lennar failed to implement measures to sufficiently prevent the offsite transport of litter, construction debris, and construction materials, Condition III(F)(2)(a)(iii);
- e. October 23, 2019 to present – Lennar failed to maintain control measures at the Development in effective working condition, Condition III(F)(6)(a);

- f. May 8, October 24, and October 25, 2019, with likely recurrence upon subsequent rainfall events – Lennar discharged pollutants including suspended solids, thereby failing to minimize the discharge of pollutants, Condition III(G)(1);
- g. March 19, 2018 to present – Lennar has failed to stabilize soils in areas where soil disturbance has ceased for more than fourteen days, Condition III(G)(2).

37. As identified above, each of these violations is either ongoing, or is anticipated to recur upon subsequent rainfall events. If maximum penalties were imposed, this would result in penalties in excess of \$1,000,000.

### **FIRST CAUSE OF ACTION**

#### **Failure to Develop and Implement an Adequate SWPPP, in Violation of General Permit TXR150000**

38. Plaintiffs incorporate the allegations contained in all other paragraphs as though fully set forth herein.

39. General Permit TXR150000 requires dischargers of stormwater associated with construction activity to develop and implement an adequate SWPPP when they commenced construction activity.

40. Lennar has failed and continues to fail to develop and implement an adequate SWPPP or implement all necessary revisions to the SWPPP for the Development as required by General Permit TXR150000.

41. By committing the acts and omissions alleged above, Lennar is subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

42. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm GEAA for which harm it has no plain, speedy, or adequate remedy at law.

43. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

### **RELIEF REQUESTED**

Plaintiffs respectfully request this Court to grant the following relief:

A. Declare Lennar to have violated and to be in violation of sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for failing to adequately maintain and implement an SWPPP for the Development;

B. Enjoin Lennar from violating the substantive and procedural requirements of General Permit TXR150000 at the Development;

C. Order Lennar to pay civil penalties of up to \$46,192 per day for all violations in accordance with CWA section 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1-19.4, and as increased by EPA pursuant to Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015;

D. Award Plaintiffs their costs (including reasonable attorney, witness, and consultant fees) as authorized by the CWA section 505(d), 33 U.S.C. § 1365(d); and

E. Award any such other relief as this Court may deem appropriate

Dated: June \_\_\_, 2020

FREDERICK, PERALES, ALLMON & ROCKWELL, P.C.

By: \_\_\_\_\_

Eric Allmon  
FREDERICK, PERALES,  
ALLMON & ROCKWELL, P.C.  
1206 San Antonio Street  
Austin, Texas 78701  
(512) 469-6000  
(512) 482-9346 Fax  
eallmon@lf-lawfirm.com

*Counsel for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

GREATER EDWARDS AQUIFER	)	
ALLIANCE, <i>et al.</i> ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. _____.
	)	
LENNAR HOMES OF TEXAS	)	
LAND AND CONSTRUCTION, LTD.,	)	
	)	
Defendant.	)	

**CONSENT DECREE**

This Consent Decree (“Consent Decree”) is hereby entered into by and between the Greater Edwards Aquifer Alliance (“GEAA”), Bulverde Neighborhood Alliance (“BNA”), and Shawn and Eddie Langford (“the Langfords”) (referred to herein collectively as “Plaintiffs”) and Lennar Homes of Texas Land and Construction, Ltd. (“Lennar” or “Defendant”). Collectively, Plaintiffs and Lennar are sometimes referred to collectively in this Consent Decree as the Parties or individually as a Party.

**RECITALS**

WHEREAS, Lennar is involved in the development of “4S Ranch,” which is comprised of approximately 775 acres of land, located immediately northwest of the City of Bulverde, Texas, proposed to be used for a combination of commercial and residential purposes (the “Development”);

WHEREAS, Lennar holds Registration No. TXR15216K for construction at the Development, under Texas Construction Activities General Permit TXR150000 (“Permit”);

WHEREAS, on October 30, 2019, pursuant to the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (“Clean Water Act” or “CWA”), Plaintiffs provided notice of intent to file suit against Lennar for alleged violations of the Permit and the CWA related to the Development (“Notice Letter”) to Lennar and the Administrator of the United States Environmental Protection Agency (“EPA”), the Regional Administrator of EPA Region VI; the Attorney General of the United States; and the Chairman, Commissioners, and Executive Director of the Texas Commission on Environmental Quality (“TCEQ”) (collectively “state and federal agencies”);

WHEREAS, as of the date of the filing of this Consent Decree, plaintiffs filed a complaint, based on the allegations set forth in the Notice Letter;

WHEREAS, the Notice Letter and the complaint alleges that Lennar had violated provisions of the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges (the “Industrial General Permit”), specifically: from March 19, 2018 to present, Lennar failed to develop a storm water pollution prevention plan (“SWPPP”) under the Industrial General Permit prior to the commencement of construction that minimizes to the extent practicable the discharge of pollutants in stormwater associated with construction activity and non-stormwater discharges, (Condition III of the Permit); from March 19, 2018 to present, Lennar commenced construction activities in the Development resulting in soil disturbance prior to implementation of SWPPP (Condition III(C) of the Permit); on May 8, October 24, and October 25, 2019, Lennar failed to adequately contain rainfall on the Development resulting from a 2-year, 24- hour storm event, (Condition III(F)(2)(c)(i)(A)(1) of the Permit); on May 8, October 24, and October 25, 2019, Lennar failed to implement measures to sufficiently prevent the offsite transport of litter, construction debris, and construction materials at the Development (Condition

III(F)(2)(a)(iii) of the Permit); from October 23, 2019 to present, Lennar failed to maintain control measures at the Development in effective working condition (Condition III(F)(6)(a) of the Permit); on May 8, October 24, and October 25, 2019, Lennar discharged pollutants from the Development, including suspended solids, thereby failing to minimize the discharge of pollutants (Condition III(G)(1) of the Permit); and from March 19, 2018 to present, Lennar failed to stabilize soils in areas where soil disturbance has ceased for more than fourteen days at the Development (Condition III(G)(2) of the Permit);

WHEREAS, Lennar denies any and all of the violations alleged in the Notice Letter and the Complaint;

WHEREAS, upon receipt of the Notice Letter, Lennar implemented the following corrective measures at the Facility including: updated the SWPPP; installed additional best management practices (“BMPs”) such as additional silt fencing and check dams to control the volume and velocity within the Development; installed additional detention basin capacity; provided additional training to the BMP inspectors and contractors; and stabilized soils in all areas where soil disturbance had ceased for more than fourteen days at the Development (hereinafter, “Corrective Actions”);

WHEREAS, because of the Corrective Actions taken by Lennar after October 30, 2019, and prior to the filing of the Complaint, Lennar is in substantial compliance with the Permit and the CWA; and

WHEREAS, to promote judicial economy and avoid the uncertainty and expense of litigation, the Parties desire to settle and compromise their dispute concerning Plaintiffs’ claims upon the terms and conditions set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Plaintiffs and Lennar hereby agree as follows:

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(1)-(2). For purposes of this Consent Decree or any action to enforce this Consent Decree, Defendant consents to the Court's continuing subject matter and personal jurisdiction over this Consent Decree and consents to venue in this judicial district.

### **COMPLIANCE REQUIREMENTS**

2. Lennar agrees to operate the Development in compliance with the applicable requirements of the Permit and the Clean Wat Act.

### **ATTORNEY'S FEES AND MITIGATION**

3. Penalties and Fees. Lennar shall pay the cash sum of \$25,000 in attorneys' fees and costs to Frederick, Perales, Allmon & Rockwell, P.C.

4. Supplemental Environmental Project ("SEP"). Lennar agrees to undertake a SEP to resolve this matter. Under the terms of the SEP, and in lieu of any other penalties against Lennar that may have been assessed had this action proceeded to trial, Lennar shall pay the sum of \$25,000 to Greater Edwards Aquifer Alliance for use in projects related to improving water quality of the Edwards Aquifer.

### **RELEASE**

5. Plaintiffs and their agents, relatives, heirs, successors, and personal representatives (collectively referred to in this Consent Decree as "Releasors") hereby now and forever release



and discharge Lennar and Lennar's employees, principals, officers, directors, shareholders, partners, agents, consultants, contractors, successors, attorneys, insurers, brokers, and insurers of Lennar's consultants and contractors (collectively referred to in this Consent Decree as "Releasees") from any and all claims, demands, losses, expenses, damages, liabilities, actions, and causes of action of any nature that in any manner arise from or relate to the allegations in the Plaintiffs' complaint.

### **NO ADMISSION OF LIABILITY**

6. This Consent Decree is entered into for the purposes of compromising disputed claims and avoiding the expense, inconvenience, and uncertainty of litigation. Nothing contained in this Consent Decree, nor any consideration given pursuant to it, shall constitute or be deemed an admission of any breach, liability, or damages of any Party.

7. The Parties acknowledge that the payments in ¶¶ 3 and 4 were agreed upon as a compromise and final settlement of disputed federal claims and that payment is not, and may not be construed as, an admission of liability and is not to be construed as an admission that Lennar engaged in any wrongful, tortious or unlawful activity. Lennar specifically disclaims and denies any liability to Plaintiffs or of violations of the Permit or the Clean Water Act.

### **REVIEW BY FEDERAL AGENCIES**

8. Review by Federal Agencies. Pursuant to 33 U.S.C. § 1365(c)(3), Plaintiffs shall submit this Consent Decree to the United States Environmental Protection Agency ("EPA") and the United States Department of Justice ("DOJ"), and together EPA and DOJ shall be referred to hereinafter as the "Agencies," via certified mail, return receipt requested, within five (5) days after the Effective Date of this Consent Decree for review consistent with 40 C.F.R. § 135.5. The

Agencies' review period expires forty-five (45) days after receipt of the Consent Decree by the Agencies, as evidenced by the return receipts, copies of which shall be provided to Lennar upon receipt by Plaintiffs. In the event that the Agencies comment negatively on the provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If the Parties are unable to resolve any issue(s) raised by the Agencies in their comments, the Parties agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to the Complaint in this matter to resolve the issue(s).

#### **GENERAL TERMS AND CONDITIONS**

9. Effective Dates. This Consent Decree shall become effective on its approval by this Court.

10. Term of Consent Decree. The term of this Consent Decree shall be for a term of thirty (30) days to ensure Lennar's compliance with its payment obligations under ¶¶ 3 and 4 herein.

11. Correspondence. All notices required herein or any other correspondence pertaining to this Consent Decree shall be sent by regular, certified, or overnight mail as follows:

If to Plaintiffs:

Eric Allmon  
FREDERICK, PERALES,  
ALLMON & ROCKWELL, P.C.  
1206 San Antonio Street  
Austin, Texas 78701  
(512) 469-6000  
(512) 482-9346 Fax  
eallmon@lf-lawfirm.com

If to Lennar:

Adam G. Sowatzka  
King & Spalding LLP  
1180 Peachtree Street, NE  
Atlanta, GA 30309  
404-572-3509  
asowatzka@kslaw.com

12. Except as provided in Paragraph 3, above, the Parties shall each bear their own attorney's fees and other expenses incurred as a result of the dispute to which this Consent Decree relates, including expenses for the negotiation and preparation of this Consent Decree. If any legal action is commenced to interpret, enforce, or recover damages for the breach of any term of this Consent Decree, the prevailing Party shall be entitled to recover reasonable attorney's fees incurred in connection with that action, in addition to costs of suit.

13. This Consent Decree contains the entire understanding between the Parties concerning the settlement of the claims identified in Plaintiffs' complaint. Any and all prior negotiations that are not contained in this Consent Decree as to the claims identified in Plaintiff's complaint are superseded and are of no force or effect. Each Party represents and warrants that no promise or inducement to enter into this settlement has been made to him or his that is not set forth in this Consent Decree.

14. Each Party covenants and agrees to execute such further documents and perform such further acts as may be reasonable and necessary to effectuate the purposes of this Consent Decree.

15. This Consent Decree shall be interpreted in accordance with the laws of the State of Texas. Where the context requires, the masculine, feminine, and neuter genders shall be construed to include each other, as shall the singular and the plural and the past, present, and future

tenses. If any provision of this Consent Decree is determined to be invalid or unenforceable, the remainder shall be construed and enforced so as to best effectuate the intention of the Parties at the time this Consent Decree was entered into.

16. Any disputes arising under this Consent Decree between the Parties shall be subject to a notice and meet and confer process. Each Party shall cause such notice to be disseminated to the other Party no later than ten (10) days following the start of any such dispute under the Consent Decree. The Parties shall thereafter meet and confer regarding the dispute no later than ten (10) days after the notice is received by the noticed Party.

17. This Consent Decree may not be orally superseded, modified, or amended. No waiver, modification, or amendment shall be valid unless in a writing signed by all Parties.

NOW, THEREFORE, the Parties hereby agree to enter into this Consent Decree:

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGES]

For Plaintiff, Greater Edwards Aquifer Alliance:

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Name

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Date

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Approved as to form and content:

Eric Allmon

Attorney for Greater Edwards Aquifer Alliance

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Date

For Plaintiff, Bulverde Neighborhood Alliance:

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Name

---

Date

---

Approved as to form and content:

Eric Allmon

Attorney for Bulverde Neighborhood Alliance

---

Date

For Plaintiffs, Shawn and Eddie Langford:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Approved as to form and content:  
Eric Allmon  
Attorney for Shawn and Eddie Langford

\_\_\_\_\_  
Date

For Defendant, Lennar Homes of Texas Land and Construction, Ltd.:

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Name

---

Title

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Date

---

Approved as to form and content:

Adam G. Sowatzka

Attorney for Lennar Homes of Texas Land and Construction, Ltd.

---

Date



**SECOND AMENDMENT TO SETTLEMENT AGREEMENT**

**SOAH DOCKET NO. 582-17-0899**  
**TCEQ DOCKET NO. 2016-1402-MWD**

The parties all agree to modify and amend the above referenced Settlement Agreement as follows:

- Section 3.04, entitled “Setback from Recharge Features,” shall be amended to read:

**3.04 Setback from Recharge Features.** Permit Holder or Developer agrees that there will be setbacks from groundwater recharge features in the development in accordance with the plans attached as Attachments 1 and 2.

- Section 3.17, entitled “Development Runoff,” shall be amended to read:

**3.17 Development Runoff.** Permit Holder and Developer will reduce development runoff flows to a level of at most 70 percent of pre-development flows for Phase I. For subsequent phases, Developer and Permit Holder will reduce flows to at most 90 percent of pre-development levels to the degree that this reduction does not conflict with Comal County regulations or City of Bulverde ordinances concerning stormwater runoff. If all engineering options to reduce flows to 70 percent of pre-development flows for Phase I and to 90 percent of pre-developed flows for remaining Phases, however, would increase peak runoff rates downstream of the development by more than 1 percent or raise 100-year 24-hour flood levels by more than 0.5 feet, flood reduction levels may be adjusted. The flood reduction level adjustment must be the minimum departure necessary to reduce post-development flows without increasing the 100-year, 24-hour peak runoff rate by more than 1 percent or raising flood levels by more than 0.5 feet. Flow reductions, including any adjustments, must comply with Comal County regulations and City of Bulverde ordinances. In the case of a conflict between this provision and Comal County regulations of City of Bulverde ordinances, the regulations and ordinance requirements shall prevail.

- Section 4.04, entitled “Equitable Remedies,” shall be removed in its entirety and not replaced. It is the intent of the parties that Section 4.04, including all its obligations, conditions, and constraints, shall no longer be enforceable.

**Developer**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Bulverde Neighborhood Alliance**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**Permit Holder**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

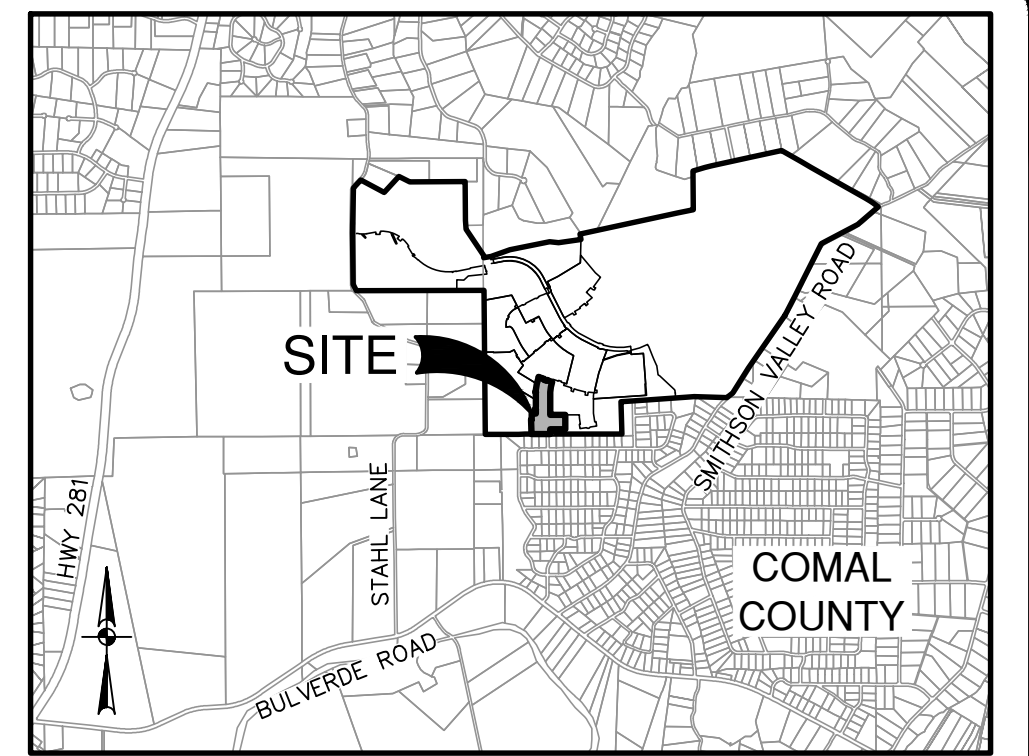
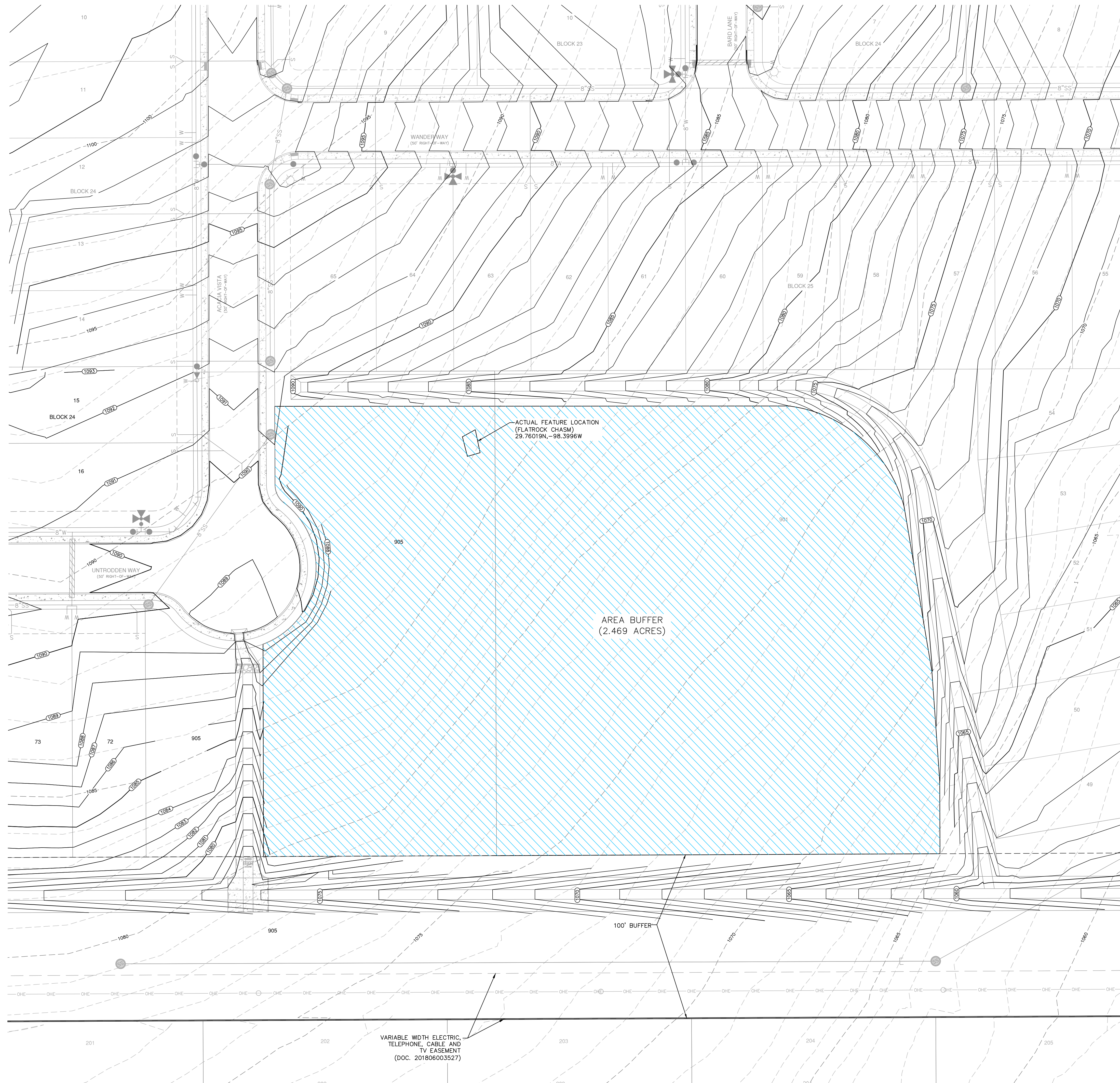
Date: \_\_\_\_\_

**Greater Edwards Aquifer Alliance**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_



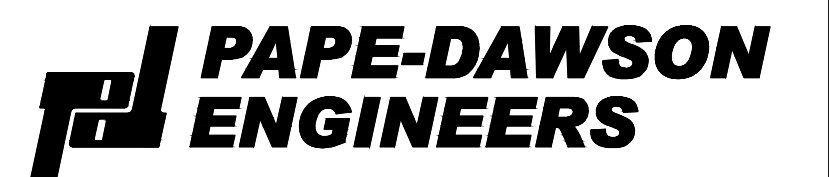
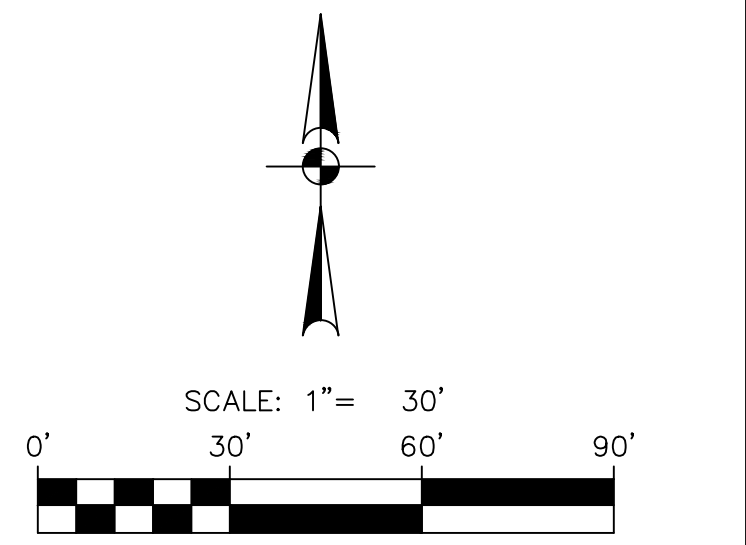
**LOCATION MAP**  
NOT-TO-SCALE

**LEGEND**

- EXISTING TOPO - - - - 1070
- PROPOSED TOPO ——— 1070
- AREA BUFFER (2.469 ACRES)

**NOTE:**  
ANY AREAS WITHIN THE BUFFER THAT HAVE BEEN CLEARED WILL BE RE-ESTABLISHED WITH TOPSOIL AND NATIVE VEGETATION.

**4S RANCH UNIT-4B  
FEATURE EXHIBIT  
(FLATROCK CHASM)  
BULVERDE, TEXAS**

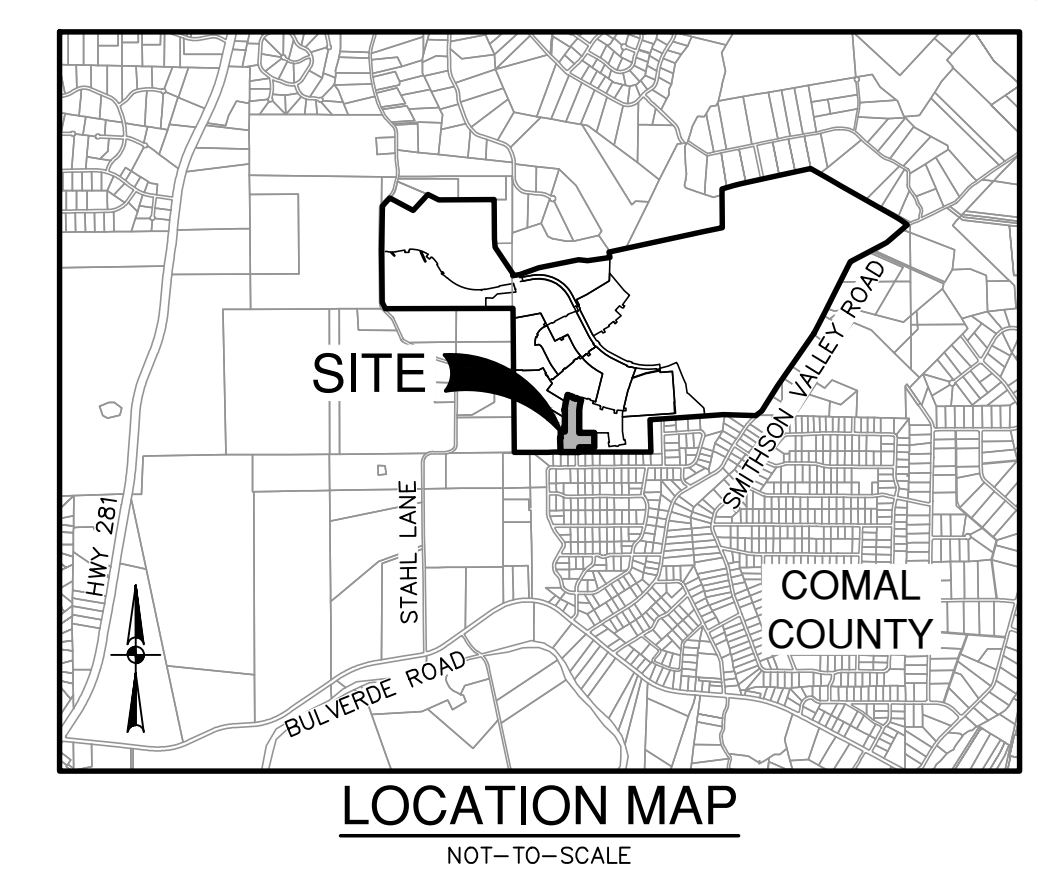
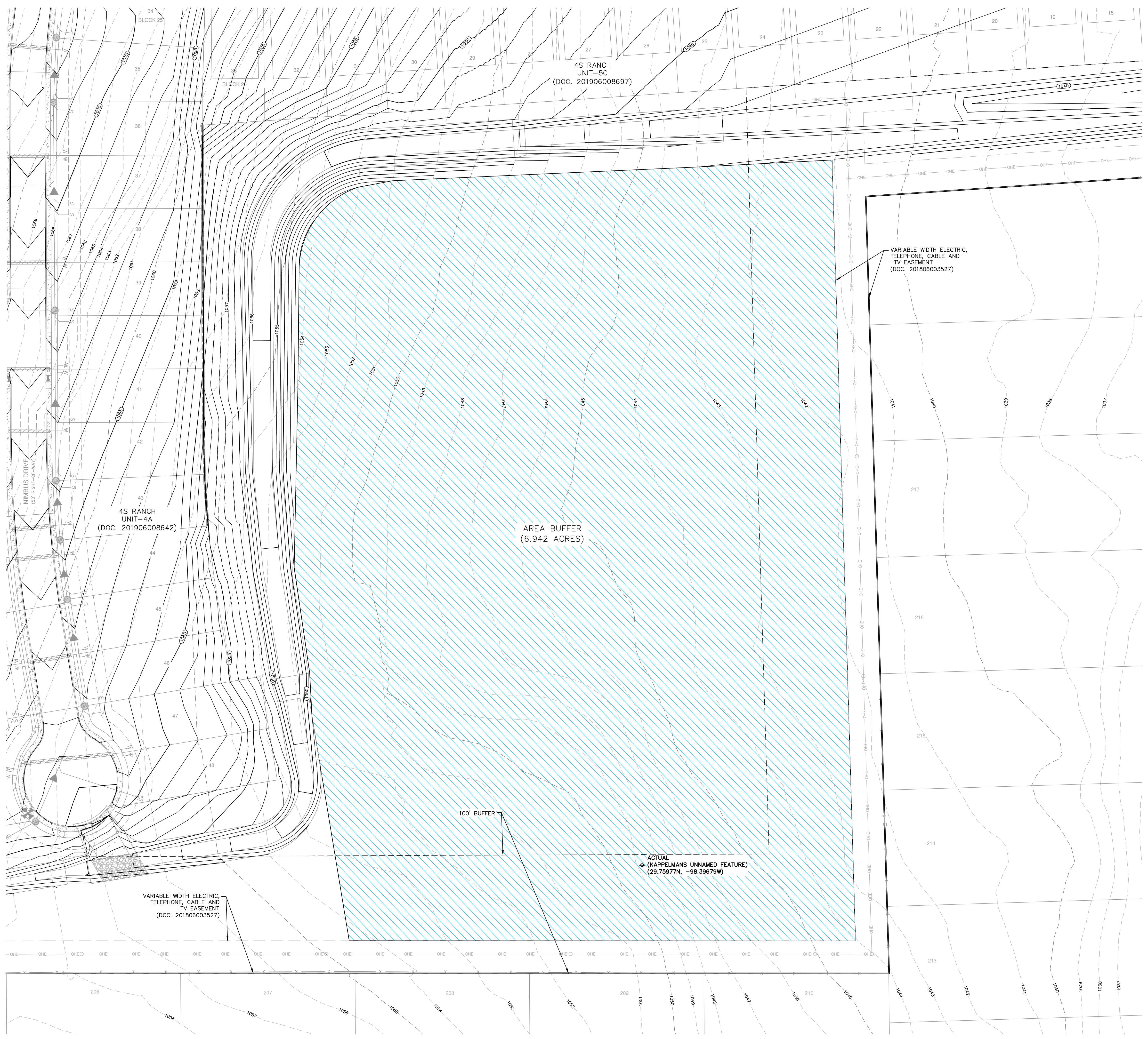


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Date: Jan 13, 2020, 4:29am User ID: TComencho File: P:\8517\34\Design\Civil\Exhibit\191007\_Feature Exhibit.dwg

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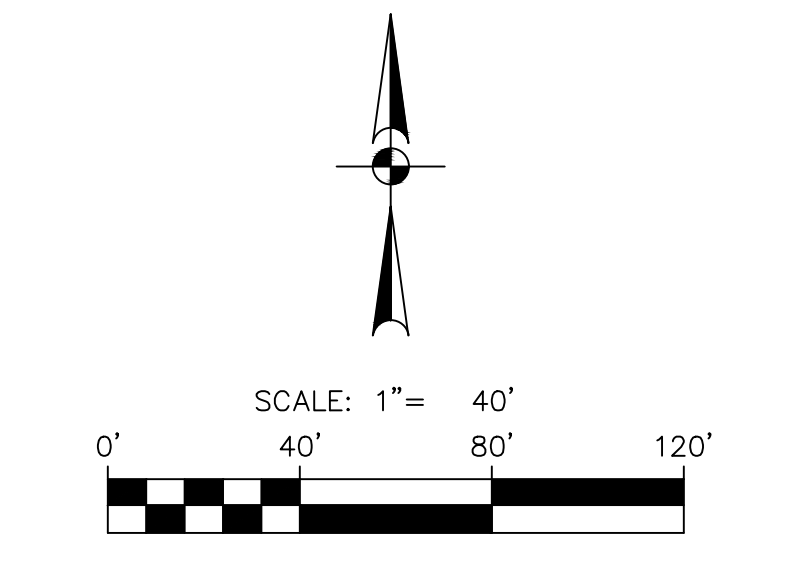
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**LEGEND**

EXISTING TOPO	--- 1070 ---
PROPOSED TOPO	— 1070 —
AREA BUFFER (6.942 ACRES)	

**4S RANCH UNIT-4B  
FEATURE EXHIBIT  
(KAPPELMANS  
UNNAMED FEATURE)  
BULVERDE, TEXAS**



**PAPE-DAWSON  
ENGINEERS**

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