



**US Army Corps
of Engineers®**

Albuquerque District

PUBLIC NOTICE

Application Number: SPA-2009-427-ELP

Date: July 28, 2014

Comments Due: August 12, 2015

**REVISED JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS, ALBUQUERQUE DISTRICT, AND
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

SUBJECT: The U.S. Army Corps of Engineers, Albuquerque District, (Corps) is evaluating a permit application to construct the Paseo Del Norte Drainage Improvements project, which would result in proposed impacts to approximately 2,722-linear feet (1.34-acres) of ephemeral washes, which are waters of the United States in Flow Path 38. This notice is to inform interested parties of the proposed activity and to solicit comments. A previous Public Notice was issued for this project on January 14, 2011. That Public Notice described a project with proposed impacts to approximately 4,615-linear feet (2.23-acres) of ephemeral washes, which are waters of the United States. In accordance with § 325.2 (a)(2), Processing of applications, the District is issuing a revised Public Notice to inform the public that the Applicant, after evaluating an additional alternative, has significantly reduced proposed impacts to waters of the United States. This has resulted in a reduced permit area and a change in the Applicant structure. Additionally, a detailed mitigation plan has been developed and accepted by the District.

AUTHORITY: This application is being evaluated under Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the United States (U.S.).

APPLICANT:

*Mr. Brent D. Harris
FSW Investments, LP
123 W. Mills Avenue Suite 600
El Paso, Texas 79912*

LOCATION: The project site is located on and near Flow Path 38, Section 34, Township 27 S, Range 3 E, Latitude 32° 52' 55.21"N, Longitude -106° 34' 22.61"W, El Paso, El Paso County, Texas.

News Release

PROJECT DESCRIPTION: The Applicant is proposing to construct improvements including the construction of roadway infrastructure, utilities, mass grading, and drainage improvements. The project would include encapsulation of the ephemeral washes, conveying flows underground in a series of box culverts. The proposed box culverts would collect flow from two sets of existing culverts, which cross Resler Drive, and ultimately convey the flow to the outfall at the TxDOT right-of-way for IH-10. Based on the available information, the overall project purpose is to remove the FEMA floodplain designation from the properties to allow for commercial and industrial development. The Applicant believes there is a need to support the rapidly growing area with commercial and industrial development. The attached drawings provide additional project details.

PROPOSED MITIGATION: As stipulated in Section 404 of the Clean Water Act, impacts to waters of the U.S. must be first avoided to the maximum extent practicable. When avoidance is not practicable, the applicant is required to minimize impacts through project design and construction and post-construction best management practices (BMPs). The proposed mitigation sequence (avoidance/minimization/compensation) as applied to the project is summarized below.

Avoidance – The project has been designed to avoid project effects to waters of the U.S. to the maximum extent practicable. The applicant is proposing construction work to be limited to onsite locations, avoiding offsite impacts. The project is designed to utilize existing offsite roadway crossings avoiding the need for additional impacts for access. The applicant’s alternatives analysis considers the need and purpose for the project in association with the location of the property relative to anticipated retail demand. A search for other available sites in the area, with similar project criteria, was conducted by the Applicant. The results of the search indicated that the proposed site is the only site available that meets their search criteria, including avoidance of impacts to waters of the U.S. Though other sites in the area did not meet their search criteria, observations of other vacant tracts indicate that the proposed site is in an ecologically degraded condition compared to other tracts and would therefore avoid impacts to other higher valued aquatic resources.

Minimization – The following project design features minimize impacts to waters of the U.S. The configuration of the existing parcel avoids impacts to downstream and adjacent properties which have also been directly and indirectly impacted from past land disturbing activities. Downstream effects to flow path 38 would be minimized by maintaining downstream flows without increasing velocities above historic conditions. Post construction BMPs would be implemented where practicable to minimize potential long term effects. The proposed action does not include the loss of any contributing drainage area to the watershed.

Mitigation – Based on the information summarized above, the applicant has demonstrated that the proposed action avoids and minimizes impacts to waters of the U.S. to the maximum extent practicable. The Corps has determined that compensation is required to mitigate for any unavoidable impacts to waters of the U.S. affected by the proposed action. The applicant has evaluated the functions and services of the waters of the U.S. affected by the proposed action and has developed a compensatory mitigation plan. Proposed compensation includes off-site out-of-kind mitigation. The protection of valuable aquatic resources have been evaluated at a replacement/impact ratio, determination based on a comparison of the functions and services, of the impacted resources and those provided by the compensatory mitigation. Proposed compensation has been designed to replace the lost functions and services currently provided by Flow Path 38 within the proposed action area. A final compensatory mitigation plan documenting the functions and services at the impact site and demonstrating the replacement of the lost functions and services at the mitigation site, has been developed by the Applicant and accepted by the District. Other compensatory mitigation opportunities may develop during the review process for this permit application and would be considered.

OTHER AUTHORIZATIONS:

State Water Quality Certification:

Tier II: This project would result in a direct impact of greater than three acres of waters of the State or 1,500 linear feet of streams (or a combination of the two is above the threshold) and as such would not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with Corps processing of this Department of the Army application, the TCEQ is reviewing this application under Section 401 of the Clean Water Act, and Title 30, Texas Administrative Code Section 279.1-13 to determine if the work would comply with State water quality standards. By virtue of an agreement between the Corps and the TCEQ, this public notice is also issued for the purpose of advising all known interested persons that there is pending, before the TCEQ, a decision on water quality certification under such act. **Any comments concerning this application may be submitted to the Texas Commission on Environmental Quality, 401 Coordinator, MSC-150, P.O. Box 13087, Austin, Texas 78711-3087.** The public comment period extends 30 days from the date of publication of this notice. A copy of the public notice with a description of the work is made available for review in the TCEQ's Austin Office. The complete application may be reviewed in the Corps' office. The TCEQ may conduct a public hearing to consider all comments concerning water quality if requested in writing. A request for a public hearing must contain the following information: the name, mailing address, application number, or other recognizable reference to the application; a brief description of the interest of the requestor, or of persons represented by the requestor; and a brief description of how the application, if granted, would adversely affect such interest.

ADDITIONAL INFORMATION:

Environmental Setting. There are approximately 2,722-linear feet (1.34-acres) of ephemeral washes that are waters of the U.S. within the proposed project area. The site is characterized by a sparse distribution of vegetation. Though limited in absolute coverage, vegetation on the study area included Devil's claw (*Proboscidea parviflora*), desert willow (*Chilopsis linearis*), creosote bush (*Larrea tridentata*), ocotillo (*Fouquieria splendens*), mesquite (*Prosopis glandulosa*), acacia (*Acacia* sp.), Mormon tea (*Ephedra viridis*), prickly pear cactus (*Opuntia basilaris*), hedgehog cactus (*Echinocereus* sp.), white thorn acacia (*Acacia constricta*), huisache (*Acacia farnesiana*), Bermudagrass (*Cynodon dactylon*) and yucca (*Yucca* sp.). The dominant vegetation throughout the study area is creosote bush.

The main tributary flows from the east downstream from Northwestern Drive in a modified segment of wash. Due to changes in the watershed, upstream runoff from the east, downstream from the Franklin Mountain Range, is captured by a series of retention ponds, constructed with surrounding developments. A comparison of the historic and existing flows shows that peak flows across the site have been reduced by as much as 76 per cent and runoff volume has been decreased by as much as 99 percent in the 2-year 24-hour storm.

The majority of the soil on the study area is dominated by the Delnorte-Canutio association, undulating.

Alternatives. The applicant has provided information concerning project alternatives. Alternatives previously proposed by the applicant included: detention/retention facilities, open earthen channels, a hybrid open channel and culvert system. These alternatives were shown to not be practicable. The Applicant has evaluated an additional alternative which significantly reduces the project area and proposed impacts to waters of the U.S. That alternative is less damaging to the aquatic environment than the original preferred alternative. Other alternatives may develop during the review process for this permit application. Other reasonable project alternatives, in particular those which may be less damaging to the aquatic environment, will be considered.

EVALUATION FACTORS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the described activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit, which reasonably may be expected to accrue from the described activity, must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the described activity will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The activity's impact on the public interest will include application of the Section 404(b)(1) guidelines promulgated by the Administrator, Environmental Protection Agency (40 CFR Part 230).

The Corps is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

HISTORIC PROPERTIES: The Corps consulted district files and records, the latest version of the National Register of Historic Places (NRHP), and state records of NRHP-eligible and potentially eligible historic properties to determine if there are any historic properties that may be affected by the proposed undertaking. Portions of the project area have been recently surveyed for historic properties. Currently, no NRHP-eligible historic properties are known to exist in the project permit area. The permit area has been extensively modified by previous work. Based on this initial information, the Corps has made a preliminary determination that the proposed project will not likely affect any historic properties that meet the criteria for inclusion in the NRHP.

ENDANGERED SPECIES: The Corps has reviewed the U.S. Fish and Wildlife Service's latest published version of Federally-listed endangered and threatened species located in El Paso County, Texas to determine if any listed species or their critical habitat may occur in the proposed project area. The Corps has made a preliminary determination that the proposed project will not affect any Federally-listed endangered or threatened species or their critical habitat that are protected by the Endangered Species Act.

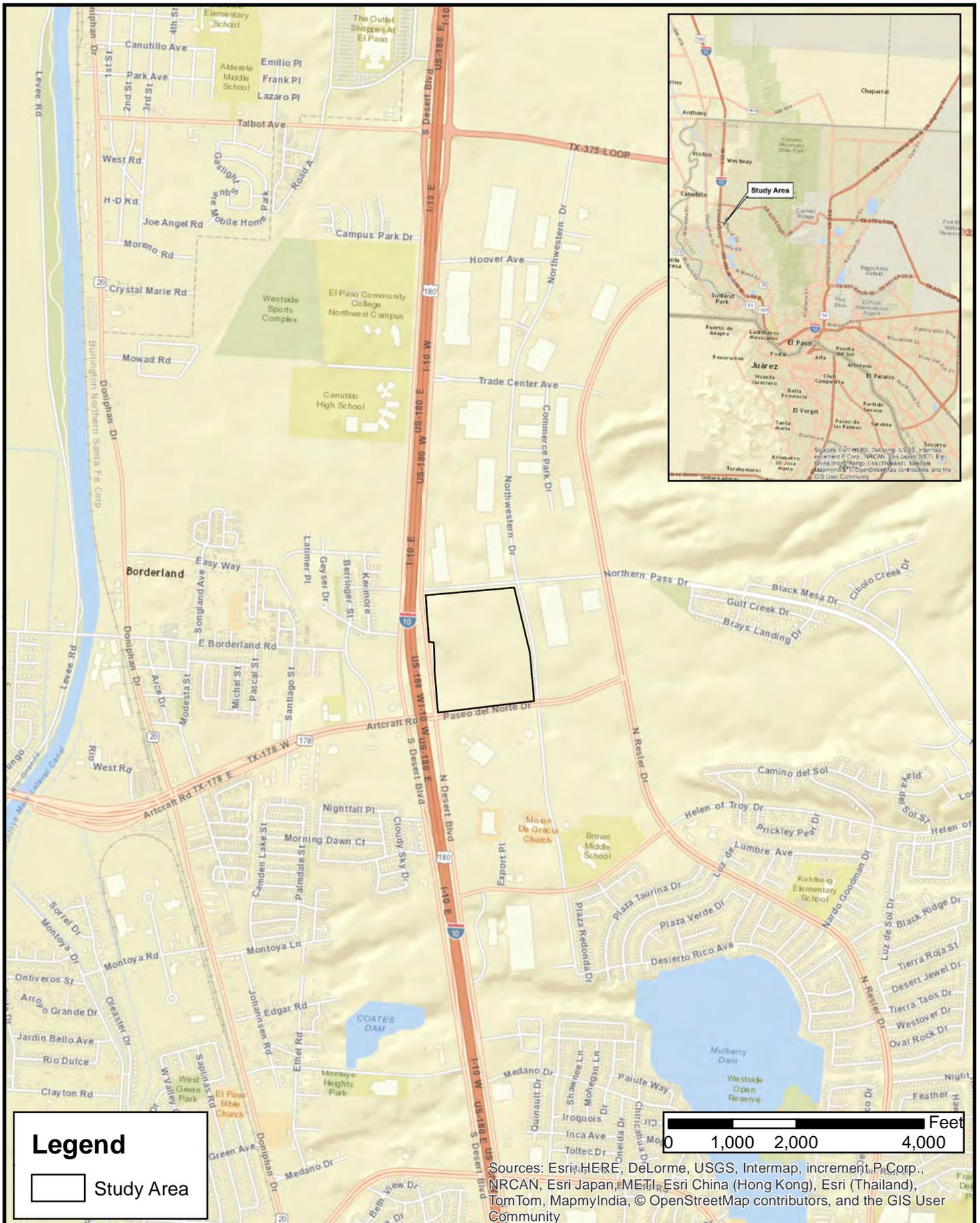
FLOODPLAIN MANAGEMENT: The Corps is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before August 12, 2014 which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Anyone may request, in writing, that a public hearing be held to consider this application. Requests shall specifically state, with particularity, the reason(s) for holding a public hearing. If the Corps determines that the information received in response to this notice is inadequate for thorough evaluation, a public hearing may be warranted. If a public hearing is warranted, interested parties will be notified of the time, date, and location. Comments and requests for additional information should be submitted to;

Richard H. Gatewood, Project Manager
U.S. Army Corps of Engineers, Albuquerque District
505 South Main Street, Suite 142
Las Cruces, New Mexico 88001
(575) 556-9939
E-mail: richard.h.gatewood@usace.army.mil

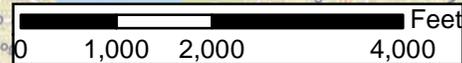
Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available through the Freedom of Information Act.

DISTRICT ENGINEER
ALBUQUERQUE DISTRICT
CORPS OF ENGINEERS



Legend

 Study Area



Sources: Esri, HERE, DeLorme, USGS, Intermap, increment P Corp., NRCAN, Esri Japan, METI, Esri China (Hong Kong), Esri (Thailand), TomTom, MapmyIndia, © OpenStreetMap contributors, and the GIS User Community

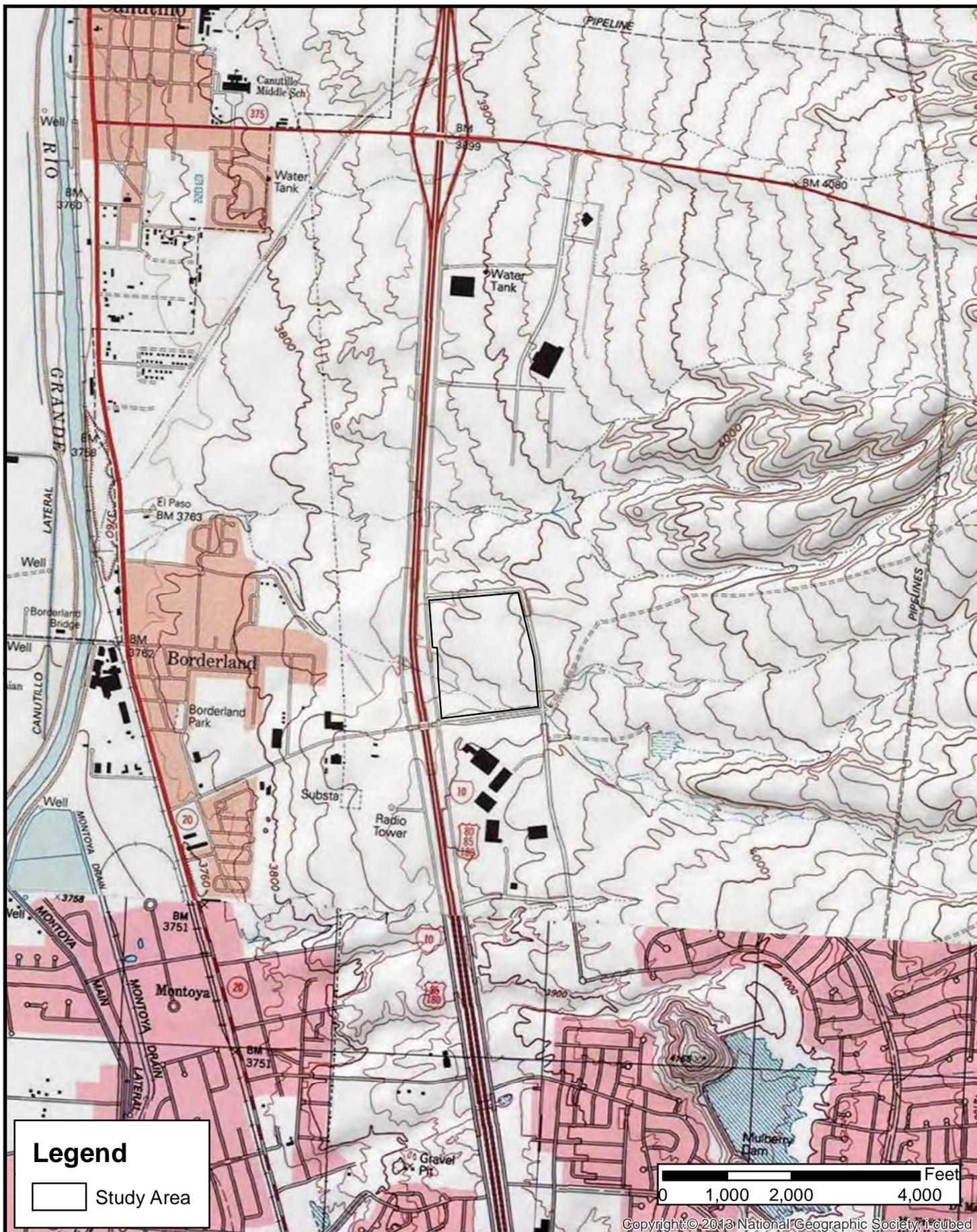
1	SHEET	DATE: 07/16/2014
		DESIGN: SCR
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		CHECKED: LDC
	OF 10 SHEETS	KHA NO.: 064421200

SPA-2009-472-ELP
Vicinity Map

FSW Investments, LP
Paseo Del Norte
El Paso, El Paso County, Texas

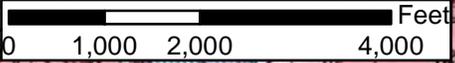


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Legend

Study Area



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	KHA NO.:	064421200

OF 10 SHEETS

SPA-2009-472-ELP
 USGS Topographic Map
 Quad Name: Canutillo

FSW Investments, LP
 Paseo Del Norte
 El Paso, El Paso County, Texas



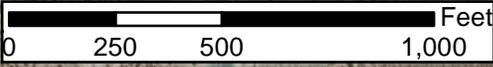
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Legend

 Study Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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SPA-2009-472-ELP
 Recent Aerial Map
 Aerial Date: 2012

FSW Investments, LP
Paseo Del Norte
 El Paso, El Paso County, Texas



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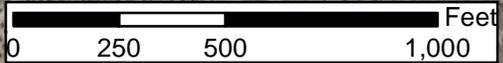


Wash B

Wash A

Legend

-  Wash A, 1,814-linear feet (0.99-acres)
-  Wash B, 908-linear feet (0.35-acres)
-  Study Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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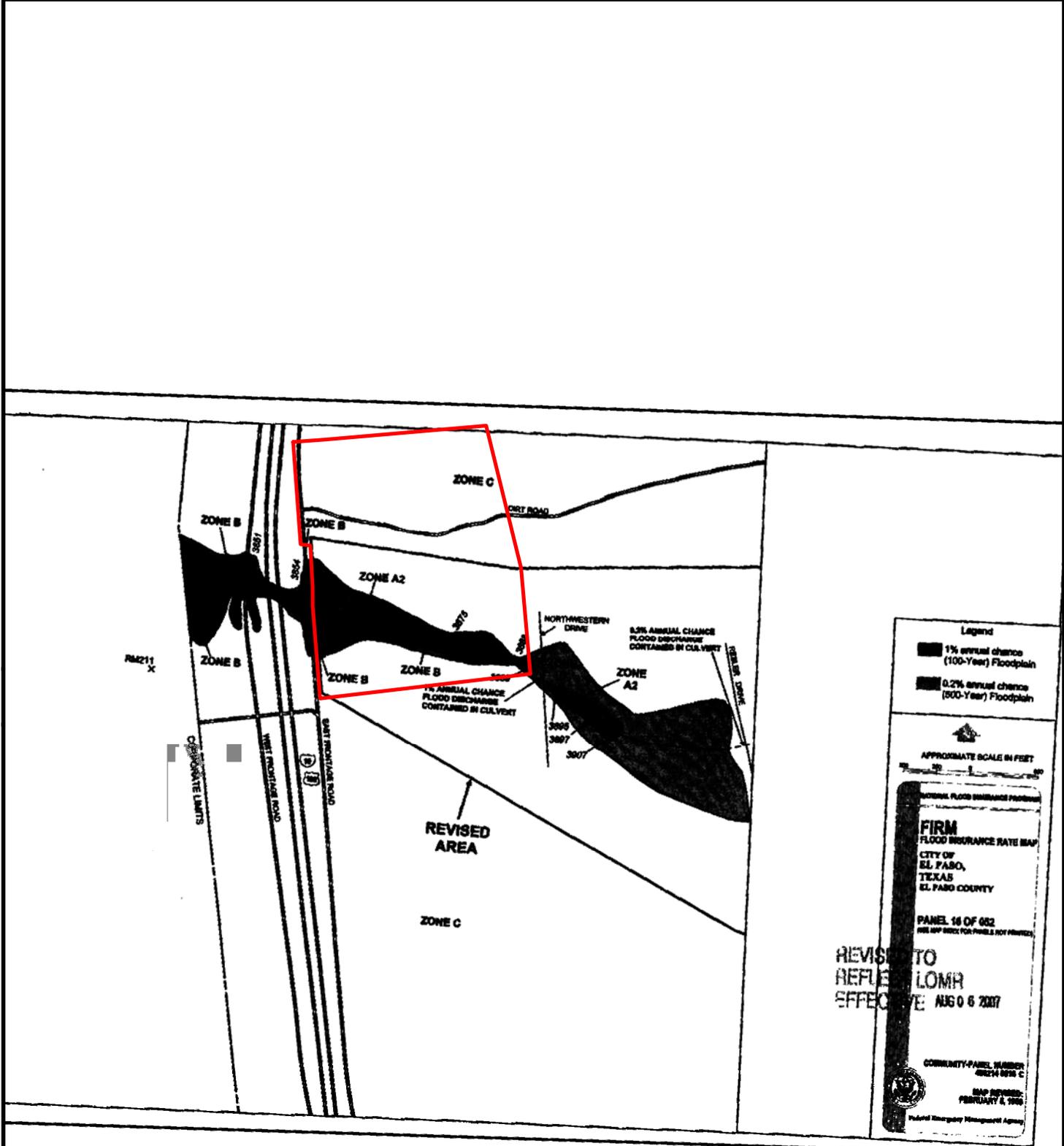
SPA-2009-472-ELP
waters of the U.S. Map
Aerial Date: 2012

FSW Investments, LP
Paseo Del Norte
El Paso, El Paso County, Texas



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Legend

- 1% annual chance (100-Year) Floodplain
- 0.2% annual chance (500-Year) Floodplain

APPROXIMATE SCALE IN FEET

FEDERAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP
CITY OF EL PASO,
TEXAS
EL PASO COUNTY

PANEL 16 OF 612
SEE MAP INDEX FOR PANEL & KEY FEATURES

REVISION TO REFLECT LOMR EFFECTIVE AUG 06 2007

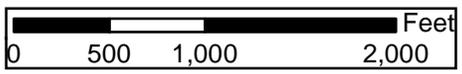
COMMUNITY-PANEL NUMBER
49274 6976 C

MAP REVISED:
FEBRUARY 8, 1996

Federal Emergency Management Agency

Legend

Study Area



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SPA-2009-472-ELP
FEMA Map
Revised 08/06/07

FSW Investments, LP
Paseo Del Norte
El Paso, El Paso County, Texas



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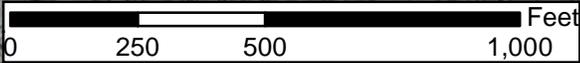
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Legend

— Proposed Site Plan

▭ Study Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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SPA-2009-472-ELP

Proposed Site Plan

Aerial Date: 2012

FSW Investments, LP

Paseo Del Norte

El Paso, El Paso County, Texas



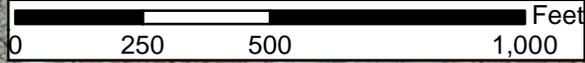
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Legend

- Wash A Impacts, 1,814-linear feet (0.99-acres)
- Wash B Impacts, 908-linear feet (0.35-acres)
- Proposed Site Plan
- Study Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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SPA-2009-472-ELP
 Impacts Map
 Aerial Date: 2012

FSW Investments, LP
 Paseo Del Norte
 El Paso, El Paso County, Texas



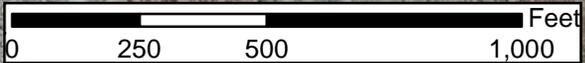
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Legend

- Wash A Impacts, 1,814-linear feet (0.99-acres)
- Wash B Impacts, 908-linear feet (0.35-acres)
- Proposed Site Plan
- Study Area



Source: Esri, DigitalGlobe, GeoEye, i-cubed, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

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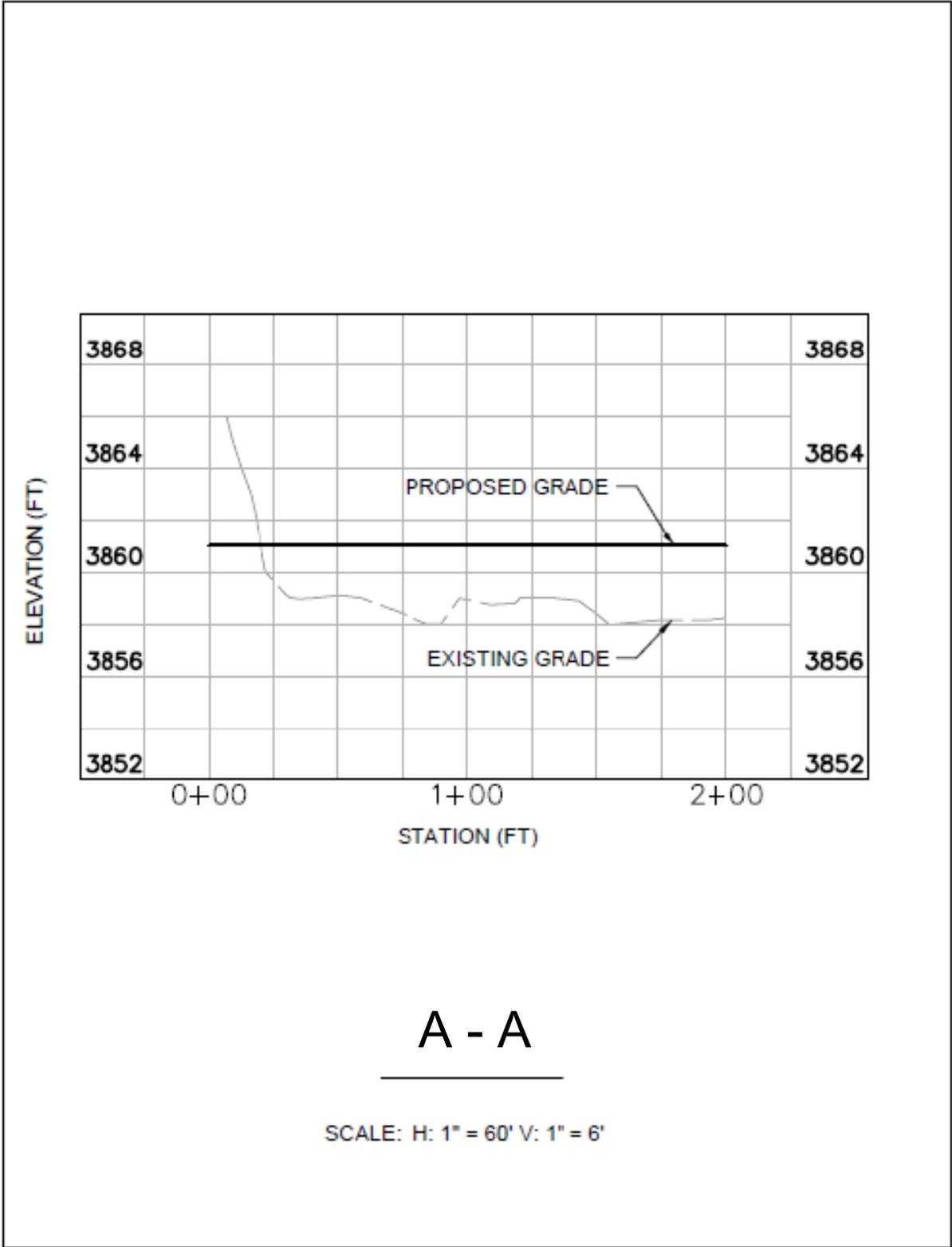
SPA-2009-472-ELP
 Cross Section Locations
 Aerial Date: 2012

FSW Investments, LP
 Paseo Del Norte
 El Paso, El Paso County, Texas



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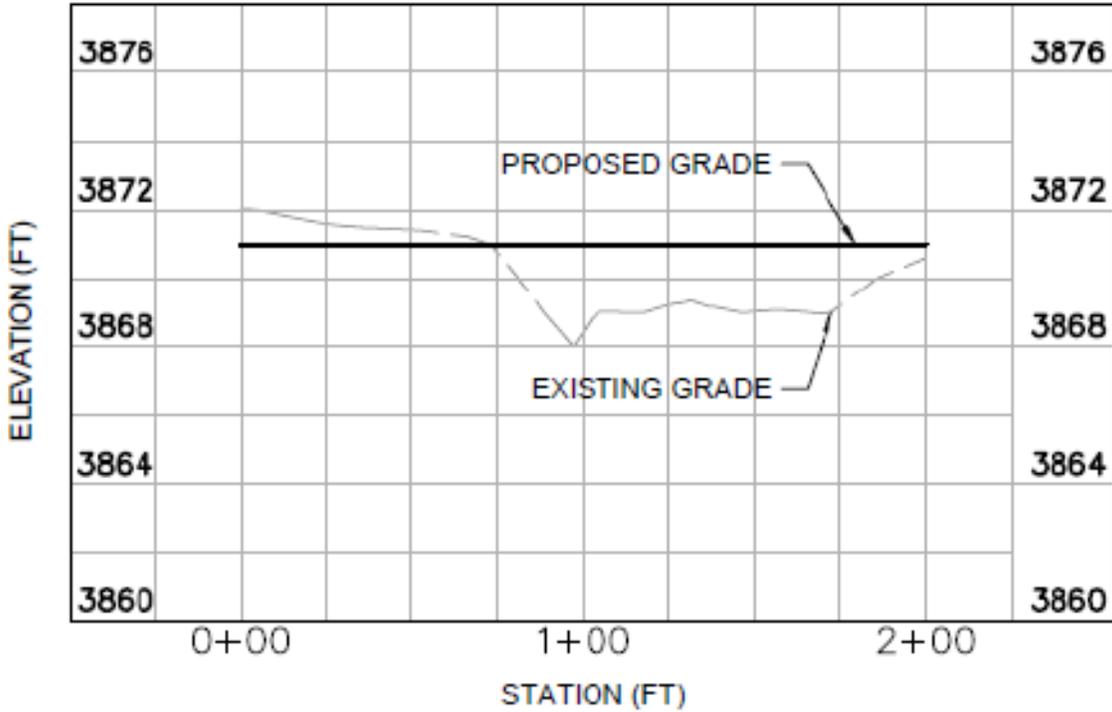
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SPA-2009-472-ELP
 Cross Section A

FWS Investments, LP
 Paseo Del Norte
 El Paso, El Paso County, Texas

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B - B

SCALE: H: 1" = 60' V: 1" = 6'

SHEET 10 OF 10 SHEETS	DATE: 07/16/2014 DESIGN: SCR DRAWN: SCR CHECKED: LDC KHA NO.: 064421200	SPA-2009-472-ELP Cross Section B	FSW Investments, LP Paseo Del Norte El Paso, El Paso County, Texas	 <small>This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.</small>
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