



Public Notice

U.S. Army Corps
of Engineers
Tulsa District

Reply To:

U.S. Army Corps of Engineers
ATTN: Regulatory Office
1645 South 101st East Avenue
Tulsa, Oklahoma 74128-4609

SWT-2017-47
Public Notice No.

May 10, 2017
Public Notice Date

June 10, 2017
Expiration Date

PURPOSE

The purpose of this public notice is to inform you of a proposal for work in which you might be interested and to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest.

SECTION 10

The U.S. Army Corps of Engineers is directed by Congress through Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404

The U.S. Army Corps of Engineers is directed by Congress through Section 404 of the Clean Water Act (33 U.S.C. 1344) to regulate the discharges of dredged and fill material into all waters of the United States. These waters include lakes, rivers, streams, mudflats, sandflats, sloughs, wet meadows, natural ponds, and wetlands adjacent to other waters. The intent of the law is to protect these waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical, and biological integrity.

NOTICE TO PUBLISHERS

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DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, TULSA DISTRICT
1645 SOUTH 101ST EAST AVENUE
TULSA, OKLAHOMA 74128-4609

Application No. SWT-2017-47

JOINT PUBLIC NOTICE
U.S. ARMY CORPS OF ENGINEERS
AND
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY (ODEQ)
(30-DAY COMMENT PERIOD)

Interested parties are hereby notified that the District Engineer (DE) has received an application for a Department of the Army (DA) permit and water quality certification pursuant to Sections 404 and 401 of the Clean Water Act. The ODEQ hereby incorporates this public notice and procedure as its own public notice and procedure by reference thereto.

Name of Applicant: Mr. Dean Gore
Plains Marketing, L.P.
333 Clay Street, Suite 1600
Houston, Texas 77002

Name of Agent: Mr. Joshua Perry
SWCA Environmental Consultants
2201 Brookhollow Plaza Drive, Suite 400
Arlington, Texas 76006

Project Description: The application is to accommodate expansion of the existing Plains Marketing Cushing facility. The new expansion project is designed to accommodate six individual 270,000 barrel (11.34 million gallons) crude oil storage tanks. Construction of one of the planned six tanks, including required appurtenances, will result in permanent impacts to aquatic features that are jurisdictional waters of the United States. An upland impoundment within the site to capture and temporarily retain stormwater runoff prior to discharging into an unnamed tributary to Mustang Creek is part of the parcel design.

If granted, this will be an after-the-fact permit. Plains self-reported that their construction department did not obtain corporate-internal environmental clearance prior to initiating construction. Permanent impacts to preexisting jurisdictional aquatic features have been estimated, based on historic aerial photography, after-the-fact technical review, and delineation of the surrounding area and the disturbed site in its current condition. Construction work believed by Plains to permanently impact jurisdictional aquatic features was voluntarily halted by Plains upon self-reporting. Construction work in upland areas for the additional five tanks has continued.

Location: The proposed project is in a rural area of Payne County, Oklahoma, approximately 3.25 miles southeast from the city of Cushing, immediately north of the Payne and Lincoln Counties line. The site is in a highly developed industrial area generally surrounded by similar large storage tanks and is centered at approximately North Latitude 35.945839, West Longitude 96.727150. The project site may also be found on the North Village, Oklahoma, 7.5 Minute USGS Quadrangle map.

Purpose: The basic purpose of this work is to safely construct a total of six new large crude oil storage tanks and required ancillary industrial equipment on a cleared flat site. Construction of one tank would permanently impact jurisdictional aquatic features. The proposed project is not a water dependent activity.

Some site construction continues in upland areas, although work potentially impacting aquatic features has stopped pending results of this permitting action. The project as proposed would permanently impact jurisdictional waters of the United States.

Nomenclature presented in the proponent's submittal (and in enclosures accompanying this Public Notice) describing permanent impacts to jurisdictional aquatic features associated with unnamed ephemeral tributaries to Cottonwood Creek are (i) Wet-04, a PEM wetland, 0.03 acre; and (ii) Wet-05, a PEM wetland, 0.05 acre. Similarly, permanent impacts to waterbodies all described as being unnamed ephemeral tributaries to Cottonwood Creek are presented as being stream segments (iii) WW-01A, 316 linear feet and 0.03 acre; (iv) WW-01B, 5 linear feet and effectively 0 acre; (v) WW-01-Segment #1, 256 feet and 0.02 acre; and (vi) WW-01-Segment #2 at 1,401 feet and 0.10 acre. Wet-03, a PEM wetland, 0 acre impact, was identified within the review area and was determined to suffer no permanent impact.

The overall purpose of this work is to place fill material into both the wetlands associated with and the unnamed tributaries to Cottonwood Creek in order to provide a cleared flat area large enough to safely construct one of six total large crude oil storage tanks. The planned outcome of the proposed project would result in filling a total jurisdictional aquatic area of approximately 1,978 linear feet of ephemeral tributaries representing an area of 0.15-acre and an additional 0.08 acre of wetland.

Table of Impacts:

Original Proposal					
Number or Location	Impact Activity	Type of Aquatic Impact	Type of Fill Material	Volume of Material Below OHWM (cys)	Footprint (ac and / or lf)

Original Proposal					
Number or Location	Impact Activity	Type of Aquatic Impact	Type of Fill Material	Volume of Material Below OHWM (cys)	Footprint (ac and / or lf)
(i) Wet-04	Placement of fill material	Elimination of PEM wetland	Native material obtained from onsite excavation	44 cys	0.03 acre
(ii) Wet-05	Placement of fill material	Elimination of PEM wetland	Native material obtained from onsite excavation	77 cys	0.05 acre
(iii) WW-01A	Placement of fill material	Elimination of ephemeral unnamed tributary to Cottonwood Creek	Native material obtained from onsite excavation	47 cys	316 linear feet and 0.03 acre
(iv) WW-01B	Placement of fill material	Elimination of ephemeral unnamed tributary to Cottonwood Creek	Native material obtained from onsite excavation	1 cy	5 linear feet and effectively 0 acre (due to extremely short length of tributary impacted)

Original Proposal					
Number or Location	Impact Activity	Type of Aquatic Impact	Type of Fill Material	Volume of Material Below OHWM (cys)	Footprint (ac and / or lf)
(v) WW-01-Segment #1 (estimated; aerially Interpreted)	Placement of fill material	Elimination of ephemeral unnamed tributary to Cottonwood Creek	Native material obtained from onsite excavation	76 cys	256 feet and 0.02 acre
(vi) WW-01-Segment #2 (estimated; (aerially Interpreted)	Placement of fill material	Elimination of ephemeral unnamed tributary to Cottonwood Creek	Native material obtained from onsite excavation	311 cys	1,401 feet and 0.10 acre
Wet-03 (PEM wet-land; no Impact)	No fill material	No fill material; no aquatic impact	No fill material	No fill material	0 feet and 0 acre
Abbreviations used in this Public Notice: cys = cubic yards; OHWM = ordinary high water mark; ac = acre; lf = linear feet					

Description of Work: The applicant proposes to place approximately 556 cubic yards of native material obtained from onsite excavation into both the wetlands associated with and the unnamed ephemeral tributaries themselves to Cottonwood Creek below its OHWM. The total permanent impact to six different aquatic features is approximately 0.23 acre and 1,978 linear feet. Fill material is expected to be acquired from on-site excavation as the entire project area is cleared and made flat suitable for heavy construction. A majority of the fill material is planned to be available onsite as the stormwater detention basin is excavated.

Avoidance and Minimization Information: The applicant provided the following statement with regard to how avoidance and minimization of impacts to aquatic resources was incorporated into the project plan:

The entirety of the Payne County East property comprises a total of 156.4 acres. Within this area, SWCA identified a total of 3 wetland features, two ephemeral waterways, and three ponds. Of these features, Plains has avoided one wetland feature, one waterway, and each of the three ponds. The waterway that has been impacted by construction will be relocated and reconnected within close proximity to the original waterway feature. Also, wetland features will be restored along this waterway and an uplift in functionality is expected once stream/wetland restoration activities are completed. Therefore, impacts overall have been offset and there is no net loss of function.

Mitigation: The applicant in its submittal proposes the following as compensatory mitigation for the after-the-fact unavoidable impacts to aquatic resources expected from the proposed project. Plains has furnished as part of its submittal an extensive mitigation plan with values quantified using the Texas Rapid Assessment Method as an attachment titled, *Payne County East Stream Functions Assessment and Proposed Mitigation Approach*. The following synopsis is furnished by the proponent:

Plains proposes to compensate for the loss of these waters of the United States by way of onsite stream restoration as well as permittee responsible mitigation. Plains has retained Ecosystems Planning & Restoration to outline these mitigation options. Please see Attachment E (of the *Payne County East Stream Functions Assessment and Proposed Mitigation Approach*.)

Plains' *Payne County East Stream Functions Assessment and Proposed Mitigation Approach* document containing their Attachment E as noted in Plains' statement immediately above, is an extensive document not included with this Public Notice that is available from the Corps upon request. The applicant goes on to state in its submittal that approximately 636 functional credits could be attributed to the impacted aquatic features based on their after-the-fact analysis and delineation. In response to this amount of baseline functional credits, the proponent has determined that its proposed mitigation will result in approximately 1,194 functional credits attributable to the aquatic ecosystem. This will yield a net increase of 558 functional credits or 1.87 times the original baseline.

This mitigation plan is the applicant's proposal. The Corps has made no determination at this time with regard to the adequacy of the proposed mitigation relative to the federal mitigation rules and guidance, including Tulsa District's Mitigation and Monitoring Guidelines. The Corps is accepting comments on the need for and nature of the proposed mitigation in addition to comments on the applicant's primary proposal. The Corps bears the final decision on the need for and extent of mitigation required if the project proposed herein is authorized.

Project Setting: The area being considered is located within a transitional zone between the Central Great Plains and Cross Timbers ecoregions of Central Oklahoma. The Central Great Plains ecoregion includes scattered hills, low mountains, gypsum karst, and sandy flats. Mean annual rainfall increases to the east, and varies from approximately 22 to 38 inches.

Existing Condition: The following description was provided by the proponent as part of the application:

The localized general vicinity of the project and mitigation areas was characterized as undeveloped agricultural land.

Additionally, the Corps is aware that the location under consideration is surrounded by industrial development consisting of scores of large crude oil storage tanks. The larger area for several square miles has undergone this type pipeline and storage infrastructure for more than forty years and continues to expand in areal extent. This extensive development over time has led to changes in the local hydrology as aquatic features are regularly disturbed and therefore regularly changed in character and even undergone individually subtle locational changes. This site itself has undergone heavy earth movement in preparation for tank construction. Very little remains of original conditions.

Cultural Resources: The DE is responsible to ensure compliance with the National Historic Preservation Act of 1966 (NHPA) (Public Law 89-665), as amended and other cultural resources laws and Executive Orders. A preliminary review of the state's records has been completed for the presence of sites included in, or eligible for inclusion in the National Register of Historic Places, as well as the Oklahoma Landmark Inventory Database. There are no known historic properties, as defined by the NHPA, in or within the vicinity of the proposed permit area.

This notice has been provided to the Oklahoma State Historic Preservation Office, Oklahoma Archaeological Survey, Native American Tribal governments, and other interested parties. If you have information pertaining to cultural resources within the permit area, please notify the Corps project manager identified within this notice to assist in a complete evaluation of potential effects. The DE will evaluate any input received and may require further investigations within the permit area, if warranted.

Threatened and Endangered Species: The applicant has provided documentation of their interaction with U.S. Fish and Wildlife Service (USFWS) pertaining to threatened and endangered species. In its electronic correspondence to SWCA dated September 22, 2016, the USFWS concurs with SWCA's 'no effect' determination pertaining to the American burying beetle (*Nicrophorus americanus*) (ABB) so long as soil disturbance would be completed before the next active season. The referenced disturbance involves extensive land clearing and earthwork.

The following federally listed species are known to occur in the vicinity or are listed for the county in which the proposed action is located, including the ABB noted above: Whooping crane (*Grus americana*), Interior Least tern (*Sterna antillarum athalassos*), Piping Plover (*Charadrius melodus*), and Red Knot (*Calidris canutus rufa*). The USFWS in their response to the proponent also states that no critical habitats exist within the project area. A copy of this notice is being furnished to the USFWS and appropriate state agencies. This notice constitutes a request to those agencies for information on

whether any other listed or proposed-to-be-listed endangered or threatened species may be present in the area which would be affected by the proposed activity.

Our preliminary determination is that the proposed activity will not affect listed threatened or endangered species or their critical habitat.

Environmental Considerations: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts of the proposed activity and its intended use 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 proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof: 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, considerations of property ownerships, and, in general, the needs and welfare of the people. A permit will be denied if the discharge does not comply with the Environmental Protection Agency's 404(b)(1) Guidelines. Subject to the 404(b)(1) Guidelines and any other applicable guidelines or criteria, a permit will be granted unless the DE determines that it would be contrary to the public interest.

Plans and Data: Plans showing the location of the proposed activity and other data are enclosed with this notice. If additional information is desired, it may be obtained from Mr. Timothy Hartsfield, Regulatory Project Manager, Tulsa District Corps of Engineers, ATTN: Regulatory Office, 1645 South 101st East Avenue, Tulsa, OK 74128, or telephone 918-669-7237.

Comments: In order to consider and evaluate the impacts of this proposed activity the Corps is soliciting comments from the public, federal, state, and local agencies and officials, Indian tribes, and other interested parties. Comments concerning the issuance of this permit should be received by the DE no later than the expiration date of this public notice. You may submit comments to mailing address Tulsa District Corps of Engineers, ATTN: Regulatory Office, 1645 South 101st East Avenue, Tulsa, OK 74128; or email CESWT-RO@usace.army.mil, please include the public notice number SWT-2017-47 in the subject line of the message.

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 the 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. Any person may request in writing,

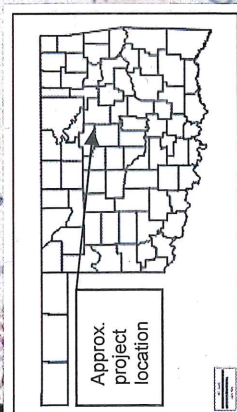
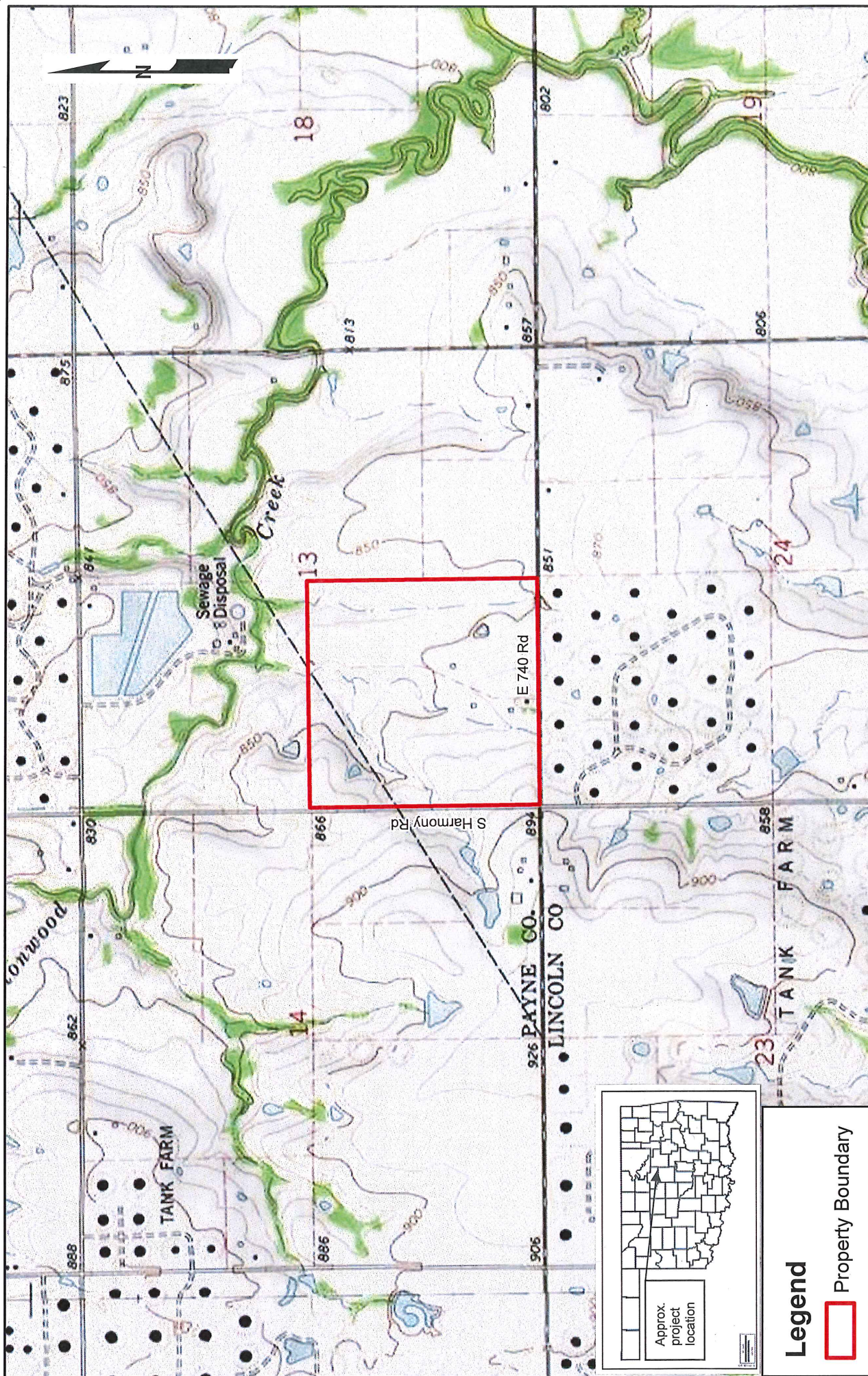
within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

At the request of the Oklahoma Water Resources Board's National Flood Insurance Program State Coordinator, we are sending a copy of this notice to the local floodplain administrator to apprise the administrator of proposed development within their jurisdiction. In accordance with 44 CFR Part 60 (Criteria for Land Management and Use), participating communities are required to review all proposed development to determine if a floodplain development permit is required. The local floodplain administrator is required to perform this review for all proposed development and maintain records of such review.

Comments concerning water quality impacts will be forwarded to ODEQ for consideration in issuing a Section 401 Water Quality Certification for the proposed project. Work may **not** commence until decisions have been made on both Sections 401 and 404.

Andrew R. Commer
Chief, Regulatory Office

Enclosures



Legend

Property Boundary

0 750 1,500

Feet

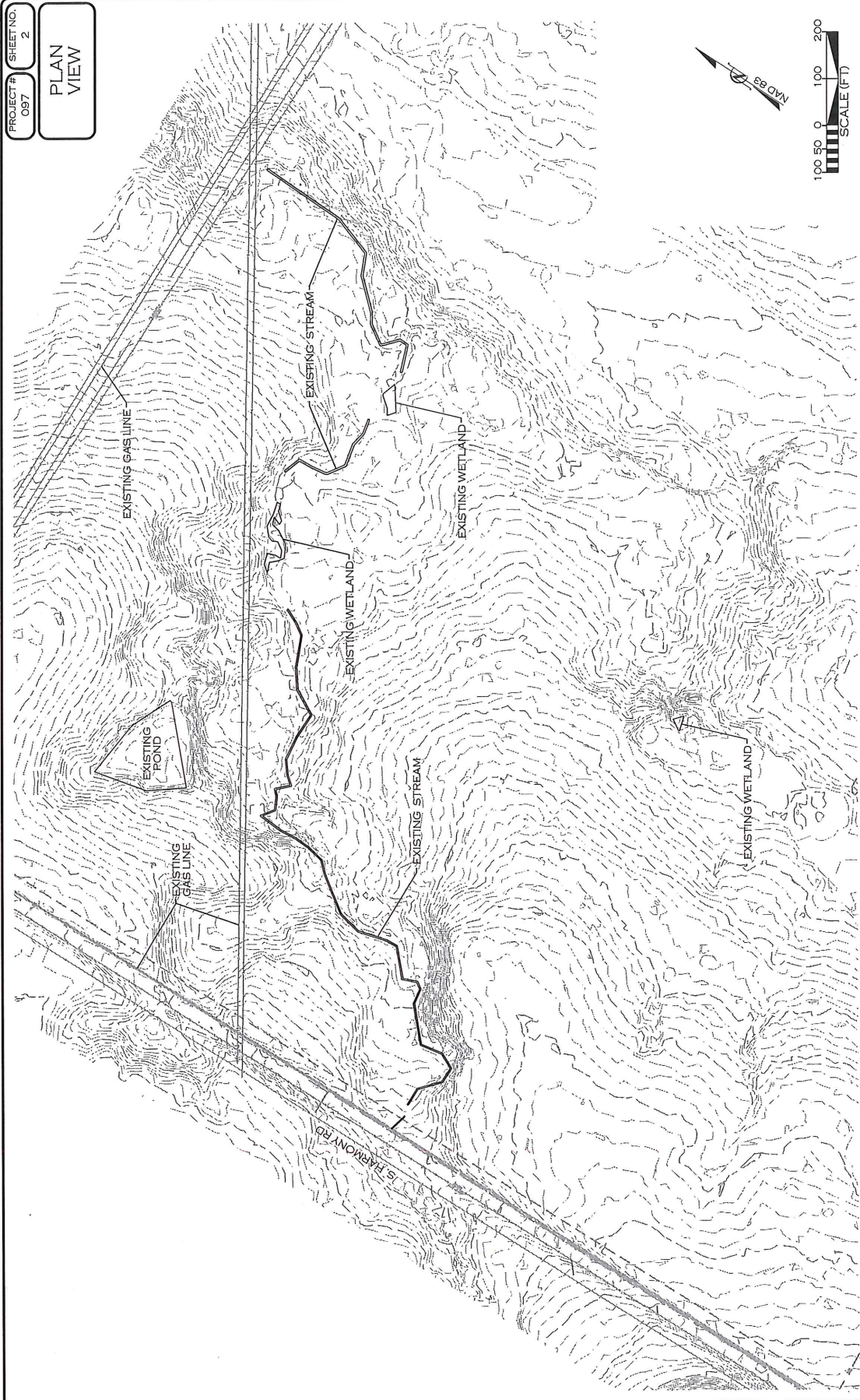
SWT-2017-047
 PAYNE COUNTY EAST EXPANSION
 UNNAMED TRIBUTARY TO COTTONWOOD CREEK
 PAYNE COUNTY, OKLAHOMA
 ENCLOSURE 1 OF 5:
 PROJECT LOCATION

PREPARED FOR:



PREPARED BY:
 ECOSYSTEM
 PLANNING &
 RESTORATION

DATE:
 APRIL
 2017



REVISIONS		ENGR.	APPROV.	DATE
NO.	DESCRIPTION			

PREPARED FOR:

PLAINS MARKETING, L.P.

393 CLAY STREET, SUITE 1600

HOUSTON, TEXAS 77002

SWT-2017-047

PAYNE COUNTY EAST EXPANSION

UNNAMED TRIBUTARY TO COTTONWOOD CREEK

PAYNE COUNTY, OKLAHOMA

ENCLOSURE 2 OF 5:

EXISTING CONDITIONS

ECOSYSTEM PLANNING & RESTORATION

559 JONES FRANKLIN RD., SUITE 150

RALEIGH, NC 27606

PROJECT ENGINEER

PROGRESS DRAWING

THIS DOCUMENT IS PRELIMINARY

AND NOT A FINAL

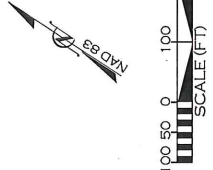
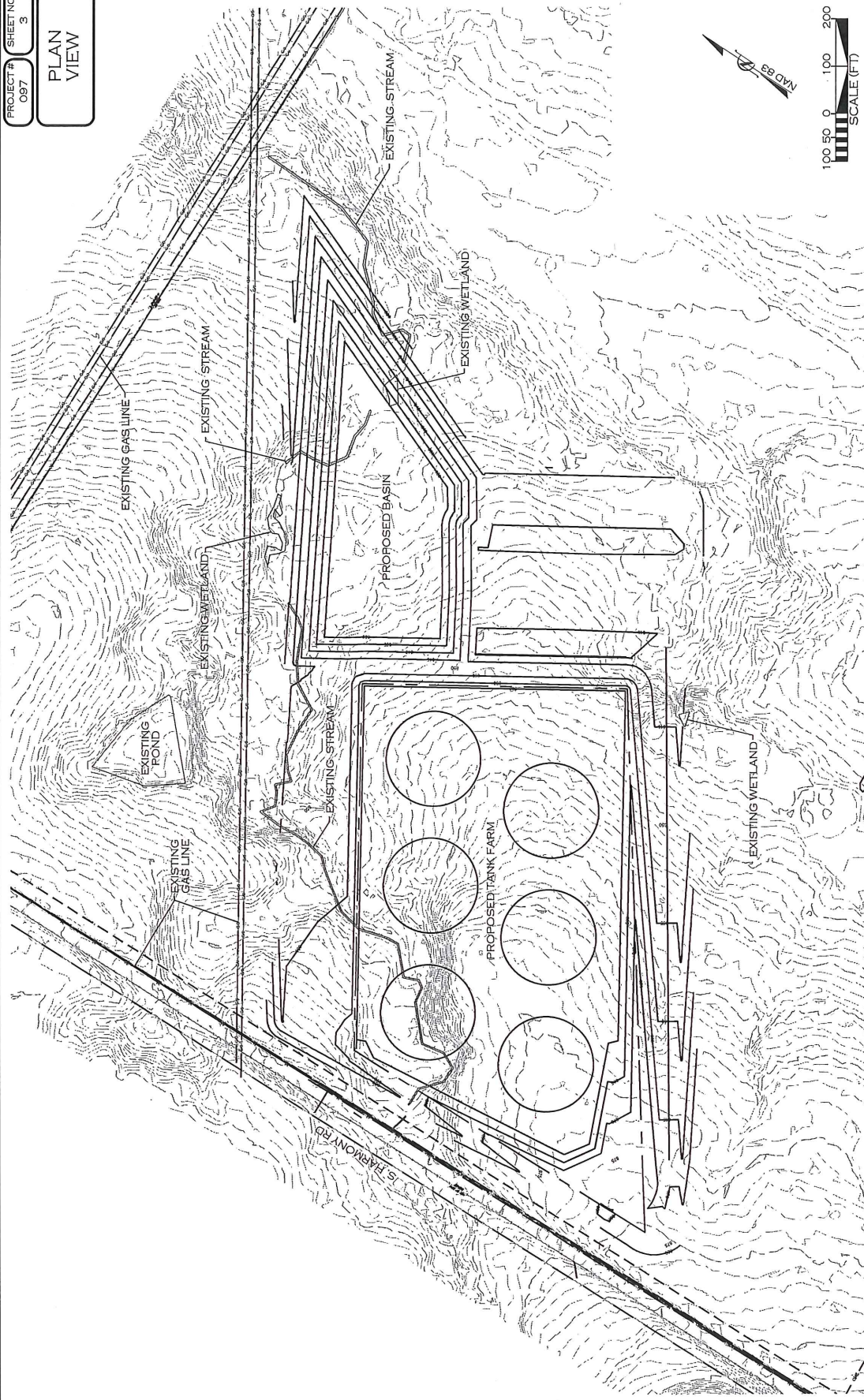
SIGNED AND SEALED DOCUMENT

11/10/2017
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PROJECT #
097

SHEET NO.
3

PLAN
VIEW



PROJECT ENGINEER

PROGRESS DRAWING
THIS DOCUMENT IS PRELIMINARY
IN NATURE AND IS NOT A FINAL
SIGNED AND SEALED DOCUMENT

PREPARED IN THE OFFICE OF:

**ECOSYSTEM
PLANNING &
EPR RESTORATION**

559 JONES FRANKLIN RD, SUITE 150
RALEIGH, NC 27606

SWT-2017-047

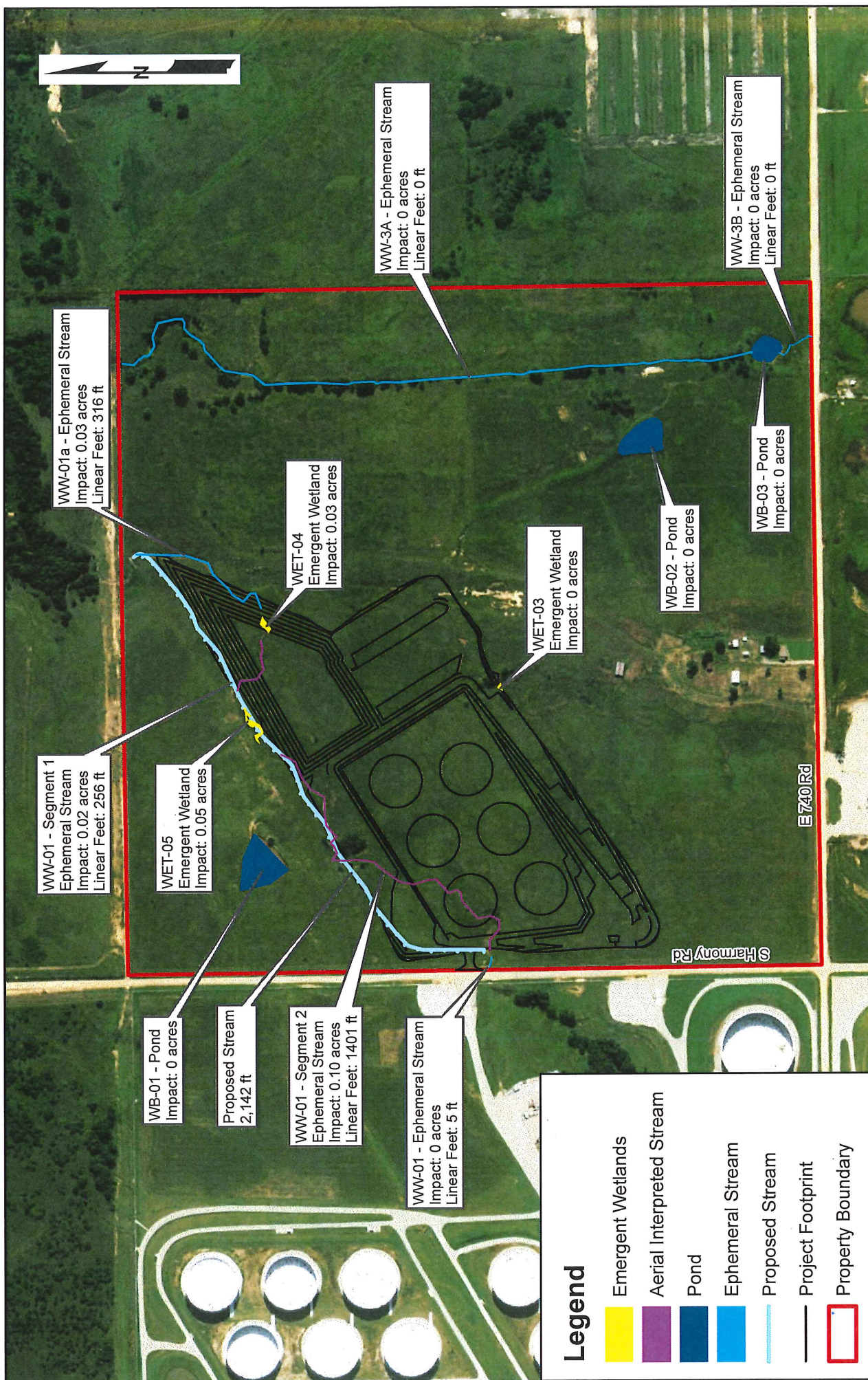
PAYNE COUNTY EAST EXPANSION
UNNAMED TRIBUTARY TO COTTONWOOD CREEK
PAYNE COUNTY, OKLAHOMA
ENCLOSURE 3 OF 5:
PROPOSED CONDITIONS

PREPARED FOR:

**PLAINS
MARKETING, L.P.**

333 CLAY STREET, SUITE 1600
HOUSTON, TEXAS 77002

NO.	REVISIONS		ENGR.	APPROV.	DATE
	DESCRIPTION				



PREPARED FOR:

DATE:
APRIL
2017

PREPARED BY:
ECOSYSTEM
PLANNING &
EPR RESTORATION

SWT-2017-047

PAYNE COUNTY EAST EXPANSION

UNNAMED TRIBUTARY TO COTTONWOOD CREEK

PAYNE COUNTY, OKLAHOMA

ENCLOSURE 4 OF 5:

DELINEATION AND PARTIAL MITIGATION

0 250 500 Feet

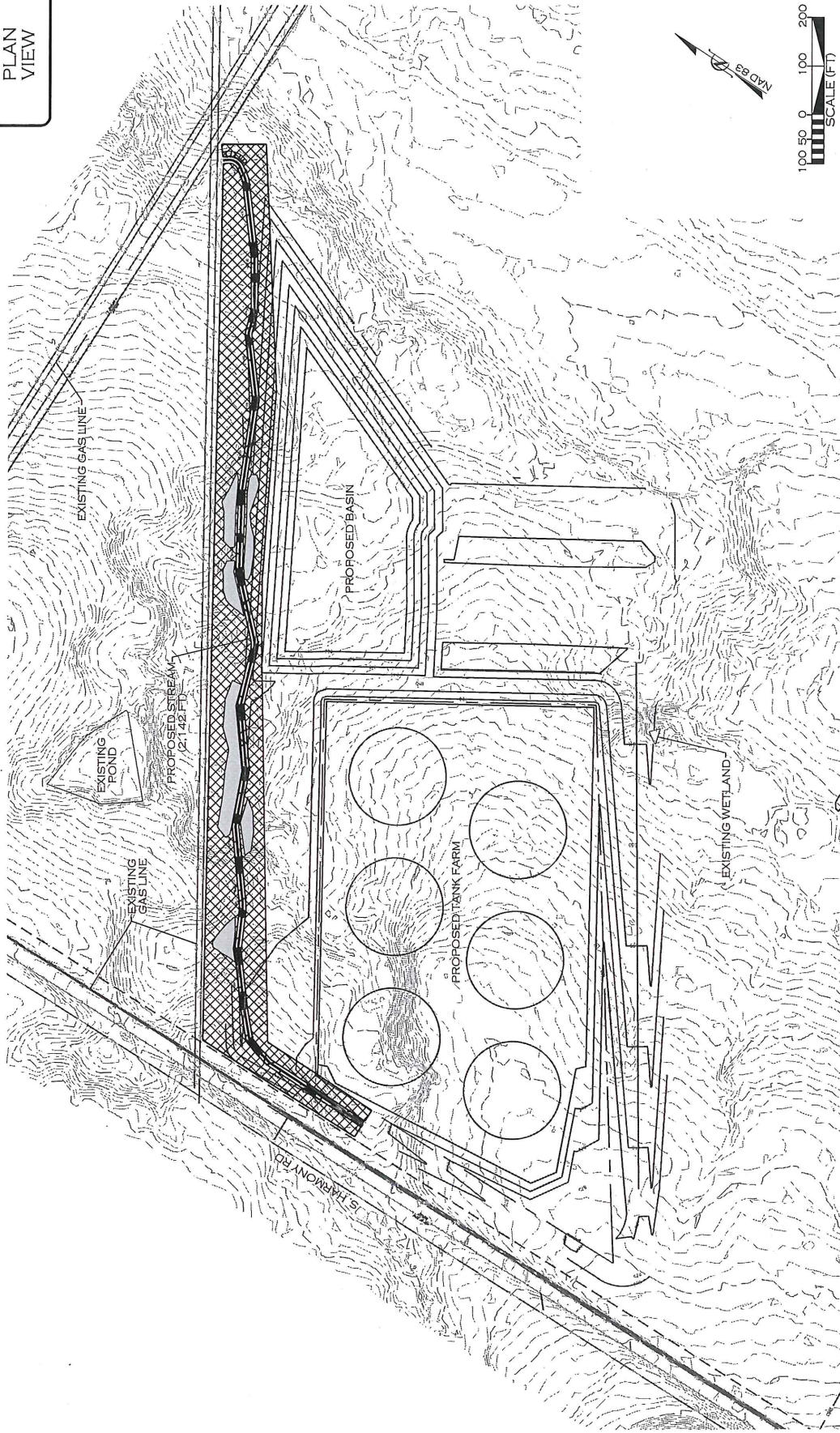
PROJECT #
097

SHEET NO.
5

PLAN
VIEW

PROPOSED WETLAND ENHANCEMENT / CREATION
(APPROX. 0.52 ACRES)

RIPIARIAN BUFFER AREA
(APPROX. 4.8 ACRES)



NO.	DESCRIPTION	ENGR.	APPROV.	DATE

PREPARED FOR:

PLAINS MARKETING, L.P.
333 CLAY STREET, SUITE 1000
HOUSTON, TEXAS 77002

SWT-2017-047
PAYNE COUNTY EAST EXPANSION
UNNAMED TRIBUTARY TO COTTONWOOD CREEK
PAYNE COUNTY, OKLAHOMA
ENCLOSURE 5 OF 5:
PARTIAL MITIGATION (ENGINEERING DETAIL)

PREPARED IN THE OFFICE OF:

ECOSYSTEM PLANNING & RESTORATION
559 JONES FRANKLIN RD., SUITE 150
RALEIGH, NC 27606

PROJECT ENGINEER

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