



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: July 25, 2024

AGENDA TITLE

Second reading and consideration of a motion to adopt Ordinance 8636 authorizing and directing the acquisition of various property interests, within city limits, by purchase or eminent domain proceedings, for the construction of the Gregory Canyon Creek Flood Mitigation project; and setting forth related details.

PRESENTERS

Nuria Rivera-Vandermyde, City Manager
Teresa Tate, City Attorney
Leila Behnampour, Assistant City Attorney
Joe Taddeucci, Public Utilities Director
Brandon Coleman, Civil Engineering Manager
Christin Kapatayes, Civil Engineering Senior Project Manager

EXECUTIVE SUMMARY

Mitigating Boulder's flood risk is the top priority for the Flood and Stormwater Utility to ensure life safety, to protect property and to enhance Boulder's natural creek corridors. The [Gregory Canyon Creek Flood Mitigation Plan](#) was approved by City Council in 2015, and a first phase project to increase the channel capacity between Pennsylvania Avenue and Arapahoe Avenue is currently in design and slated for fall 2025 construction.

To complete the project, temporary and permanent easements are required for construction and future maintenance access of the improved flood channel. Boulder's approach for acquiring such easements follows federal guidance and emphasizes respect for the private property owner's interests. One component of the aforementioned federal

guidance is the preauthorization of eminent domain authority in the event that easement negotiations fail. It has generally been standard practice for City Council to preauthorize such authority prior to city easement acquisition negotiations.

The purpose of this Memorandum is to request that City Council consider an ordinance authorizing and directing the acquisition of all necessary easements through eminent domain proceedings in the event open market discussions are not successful. Such action would only be taken as a very last resort if all other options were exhausted. Proposed Ordinance 8636 (**Attachment A**) is included for council consideration.

STAFF RECOMMENDATION

Suggested Motion Language:

Staff requests council consideration of this matter and action in the form of the following motion:

Motion to adopt Ordinance 8636 authorizing and directing the acquisition of various property interests, within city limits, by purchase or eminent domain proceedings, for the construction of the Gregory Canyon Creek Flood Mitigation project; and setting forth related details.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS

- **Economic** – Construction of major drainageway flood mitigation projects is a primary way to reduce life safety risk and economic losses caused by floods.
- **Environmental** – Improved and protected drainageways provide enhanced ecosystems that support native species and are more resilient to flooding.
- **Social** – Protecting life and property is one of the principal goals of the utility, and improvements along Gregory Canyon Creek will reduce flood risks within the watershed.

OTHER IMPACTS

- **Fiscal** – The estimated overall project cost is \$19M. and is currently budgeted for in the utilities Capital Improvement Program budget.
- **Staff time** – Management, operation, and maintenance of the project is included in the existing Utilities Department work plan.

RESPONSES TO QUESTIONS FROM COUNCIL AGENDA COMMITTEE

None.

PUBLIC FEEDBACK

Project staff have reached out to affected property owners where easements are required to introduce the project and easement acquisition process. Property owners are generally supportive of the project and have expressed interest in working with the city to implement the project improvements.

During the June 20, 2024, City Council meeting, staff responded to a council question and clarified that the project approach and level of flood protection were consistent with the 2002 Comprehensive Flood and Stormwater Plan and that the 25-year level of flood protection would provide a significant flood protection benefit to the community. Staff continue to work through a few community concerns related to project process and emergency preparedness.

BACKGROUND

The city of Boulder is the number one flood risk in the state of Colorado because of its geographic location at the base of the foothills and urbanization along its drainageways. Gregory Canyon Creek is a steep, narrow drainageway extending from Flagstaff Road down to the confluence with Boulder Creek near 9th and Arapahoe. Gregory Canyon Creek experienced significant flooding in September 2013, which drove the Gregory Canyon Creek mitigation planning process to identify solutions to reduce the severity of future flooding and make the creek more resilient. The resulting Gregory Canyon Creek Flood Mitigation Plan was approved by City Council in December 2015. The final recommended alternative included proposed improvements to increase the capacity of roadway crossings and channel conveyance much of which is on private property.

ANALYSIS

Because the majority of the project will be built on private property, the city will need both permanent and temporary easements to construct Gregory Canyon Creek channel improvements and for future maintenance access of the improved channel. Boulder's standard practice aligns with federal property acquisition guidelines which involve working collaboratively with willing property owners to obtain necessary easements and using eminent domain only as an option of last resort if all other options have been exhausted. Although the city has been successful with this approach and anticipates receiving the necessary easements voluntarily, not having eminent domain authority as a last resort could jeopardize project completion. City Council has previously enacted similar ordinances prior to negotiations with property owners to ensure the community benefit is achieved.

All needed easement locations are on properties zoned as residential or residential-mixed use. Construction of the project improvements are not expected to diminish any property owners' property value or operation, or residents' quality of life. While construction impacts will occur on properties needing easements, direct flood protection benefits will also occur.

To ensure that each property owner is equitably compensated, the property acquisition process will follow federal property acquisition guidelines detailed in the [Uniform Relocation Assistance and Real Property Acquisition Act of 1970](#). The “Uniform Act” defines the requirements and responsibilities of the government entity acquiring the property and protects private owners’ interests to prevent the government from abusing its power or influence. The Uniform Act requires a determination of “fair market value” by a professional appraiser at the government’s expense. These appraisals then become the basis for arriving at a final negotiated settlement or acquisition price. If the negotiating parties cannot reach an agreement, then the matter moves on to the judicial system, where a three-person commission or jury determines the fair market value of the property to be acquired. If negotiations fail with any property owner and use of eminent domain authority is not granted, the project improvements cannot be constructed. Council’s options include approving the ordinance now or at a later time if and when needed or denying such approval. Staff recommends that the ordinance be approved now as doing so is consistent with past practice, has the best chance of maintaining the project schedule and maintaining positive community relations.

In the first reading memo, staff indicated that to their knowledge the City had not previously exercised eminent domain authority for a flood project. While we continue to think this is accurate, upon further research staff learned that in the 1990s the City was a party to litigation that involved eminent domain issues related to a storm and flood project.

NEXT STEPS

Staff will continue to negotiate in good faith with those property owners from whom easements are needed and does not intend to initiate any eminent domain action until mid-2025, and then only if absolutely necessary.

ATTACHMENT

A – Proposed Ordinance 8636

(Includes Exhibit A – Right of Way Drawings – Project Key Map Indicating Property Needs and Tabulations)

ORDINANCE 8636

AN ORDINANCE AUTHORIZING AND DIRECTING THE ACQUISITION OF VARIOUS PROPERTY INTERESTS, WITHIN CITY LIMITS, BY PURCHASE OR EMINENT DOMAIN PROCEEDINGS, FOR THE CONSTRUCTION OF THE GREGORY CANYON CREEK FLOOD MITIGATION PROJECT; AND SETTING FORTH RELATED DETAILS

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, FINDS AND RECITES THE FOLLOWING:

A. The City of Boulder, Colorado, (the “City”) is a home rule city in the State of Colorado.

B. The City is vested with all powers of eminent domain and condemnation pursuant to Article XX of the Colorado Constitution and the City Charter.

C. The City of Boulder Charter delegated City Council with legal authority and power of eminent domain.

D. The City, through the Boulder City Council (“City Council”), has approved the Gregory Canyon Creek Flood Mitigation Project (the “Project”). The first phase of the Project is to increase the channel capacity between Pennsylvania Avenue and Arapahoe Avenue.

E. The Project is intended to reduce flood risks within the Gregory Canyon Creek watershed, enhance functionality of the creek, and maximize opportunities to restore features natural to the creek corridor. The primary goal of the Project is to improve flood safety for the public by developing a design to safely convey the design storm event without adverse impacts to the regulatory 100-year floodplain by increasing channel and roadway crossing capacity.

1 F. City Council has determined that there is a need and necessity to acquire certain
2 property interests identified in this Ordinance for the construction of the Project, and that the
3 acquisition of the property interests serve and benefit the public health, safety, or welfare of the
4 City's residents.

5 G. The property sought to be acquired for the Project includes acquisition of the
6 property interests described in **Exhibit A**, attached hereto and incorporated herein by this
7 reference (the "Properties"), and the Properties are purportedly owned by the persons or entities
8 described in **Exhibit A** (the "Property Owners").

9 H. City Council finds and determines that City staff, consultants, or agents are
10 authorized to commence or continue good faith negotiations for the acquisition of the Properties
11 with Property Owners and to make good faith offers for the Properties.
12

13 I. City Council finds and determines that if the Properties cannot be obtained
14 voluntarily, the City, by and through City staff, consultants, or agents, is authorized to use its
15 power of eminent domain to commence condemnation proceedings to acquire the Properties and
16 prosecute the proceedings to conclusion.

17 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER,
18 COLORADO:
19

20 Section 1. The acquisition of the Properties as described in **Exhibit A** is necessary for
21 construction of the Project.

22 Section 2. The City, its staff, consultants, or agents are authorized to negotiate in good
23 faith and to make offer(s) of compensation with Property Owners for the acquisition of the
24 Properties, with any final agreement subject to the approval of the city manager.
25

1 Section 3. If negotiations for the acquisition of the Properties voluntarily prove
2 unsuccessful, the City, its staff, consultants, or agents are authorized to acquire, by means of
3 eminent domain, the Properties and are authorized to employ or continue to employ all necessary
4 persons for this purpose, including special condemnation counsel, if necessary, and appraisers,
5 surveyors, engineers, and other experts.

6 Section 4. Immediate possession of the Properties is necessary and required for the
7 construction of the Project for the reasons and purposes described herein. The City's staff,
8 consultants, or agents are authorized to obtain immediate possession of the Properties.

9 Section 5. The City's staff, consultants, or agents, consistent with the intent of the
10 Project, shall have the authority to amend the legal descriptions of the parcels to be acquired or
11 the nature of the interests to be acquired, as deemed necessary for the Project, and any such
12 amendments shall be included in the definition of Properties contained herein.

13 Section 6. All prior acts and actions taken by the City's officers, agents and attorneys in
14 connection with the acquisition of the Properties is hereby ratified and approved.

15 Section 7. This Ordinance is necessary to protect the public health, safety, and welfare of
16 the residents of the City and covers matters of local concern.

17 Section 8. City Council deems it appropriate that this Ordinance be published by title
18 only and orders that copies of this Ordinance be made available in the office of the city clerk for
19 public inspection and acquisition.

1 INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
2 TITLE ONLY this 20th day of June 2024.

3
4 _____
5 Aaron Brockett,
6 Mayor

7 Attest:

8 _____
9 City Clerk

10 READ ON SECOND READING, PASSED AND ADOPTED this 25th day of July 2024.

11
12 _____
13 Aaron Brockett,
14 Mayor

15 Attest:

16 _____
17 City Clerk

MILE HIGH FLOOD DISTRICT PROJECT NO. 107151
 CITY AND COUNTY OF BOULDER, STATE OF COLORADO
 NORTHEAST QUARTER OF SECTION 36
 TOWNSHIP 1 NORTH, RANGE 71 WEST, 6TH PRINCIPAL MERIDIAN
 R.O.W. LENGTH OF PROJECT = 0.44 MILES

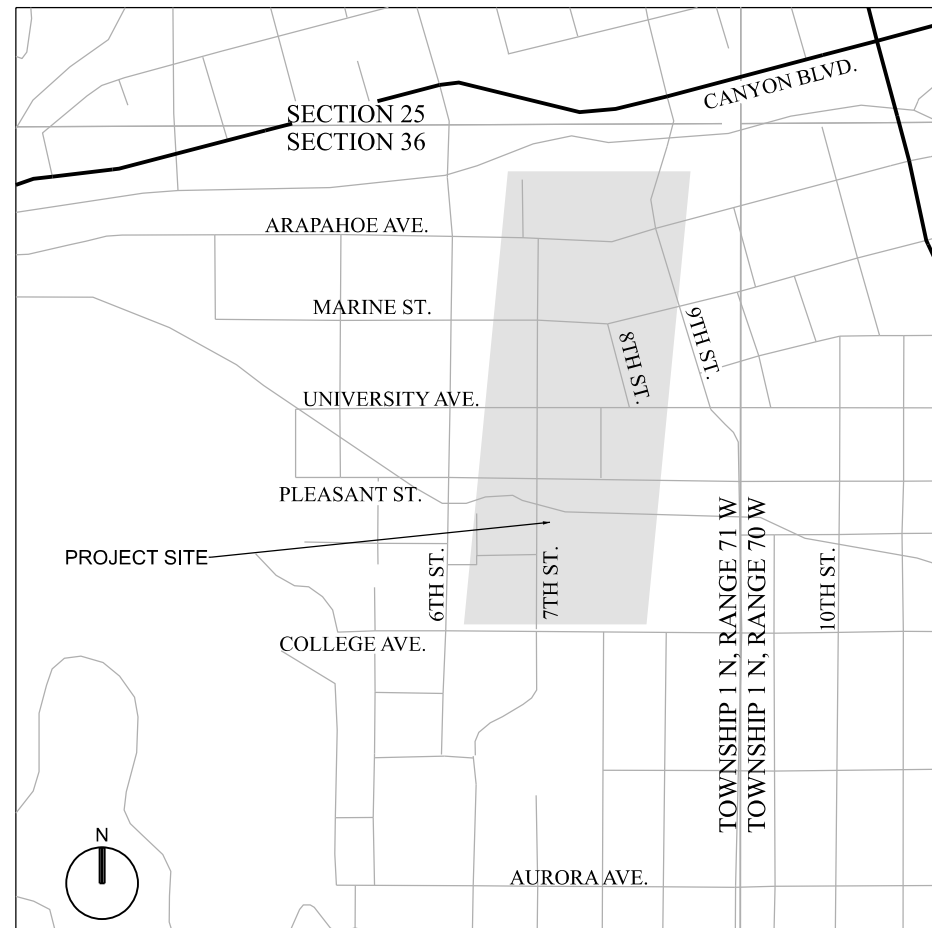
1. THIS RIGHT-OF-WAY PLAN IS NOT A BOUNDARY SURVEY AND IS PREPARED FOR MILE HIGH FLOOD DISTRICT AND CITY OF BOULDER PURPOSES ONLY. ALL BOUNDARY LINES SHOWN HEREON ARE BASED ON GIS INFORMATION.

2. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY JACOBS
ENGINEERING GROUP INC. OR THE SURVEYOR OF RECORD.

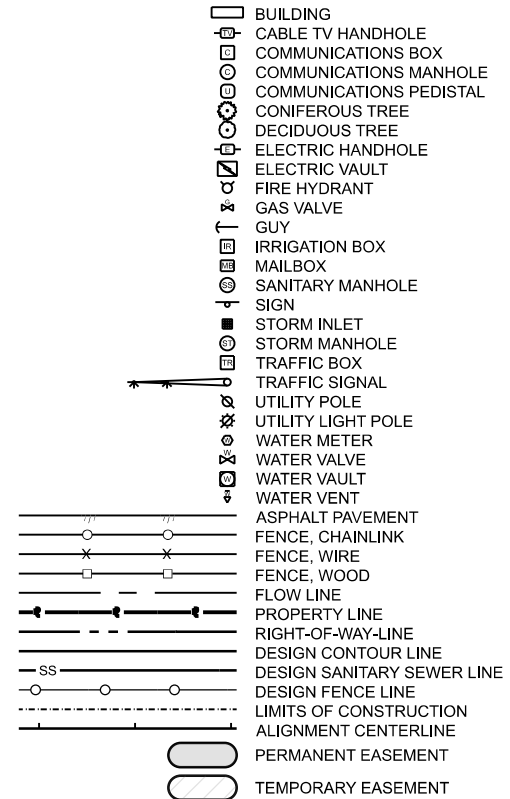
3. THIS PLAN SET IS SUBJECT TO CHANGE AND MAY NOT BE THE MOST CURRENT SET. IT IS THE USER'S RESPONSIBILITY TO VERIFY WITH CITY OF BOULDER THAT THIS SET IS THE MOST CURRENT.

4. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS, OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND MONUMENT OR ACCESSORY, COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.

5. NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.



VICINITY MAP
Scale 1" - 500'



Jacobs

GREGORY CANYON CREEK - ARAPAHOE AVE TO PENNSYLVANIA AVE
PRELIMINARY RIGHT-OF-WAY PLANS
TITLE SHEET



MILE HIGH FLOOD DISTRICT

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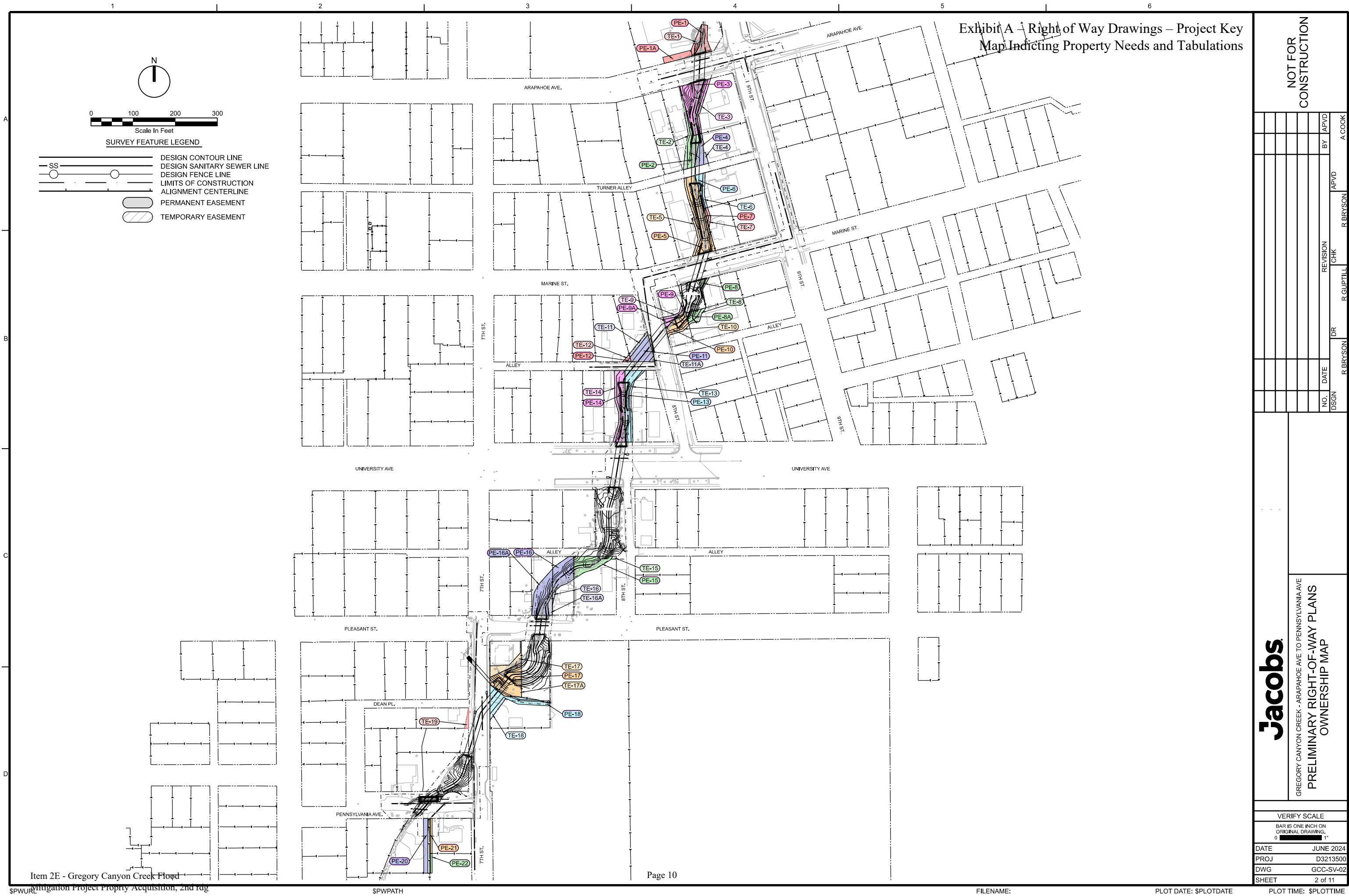
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ORIGINAL DRAWING.

DATE	JUNE 2024
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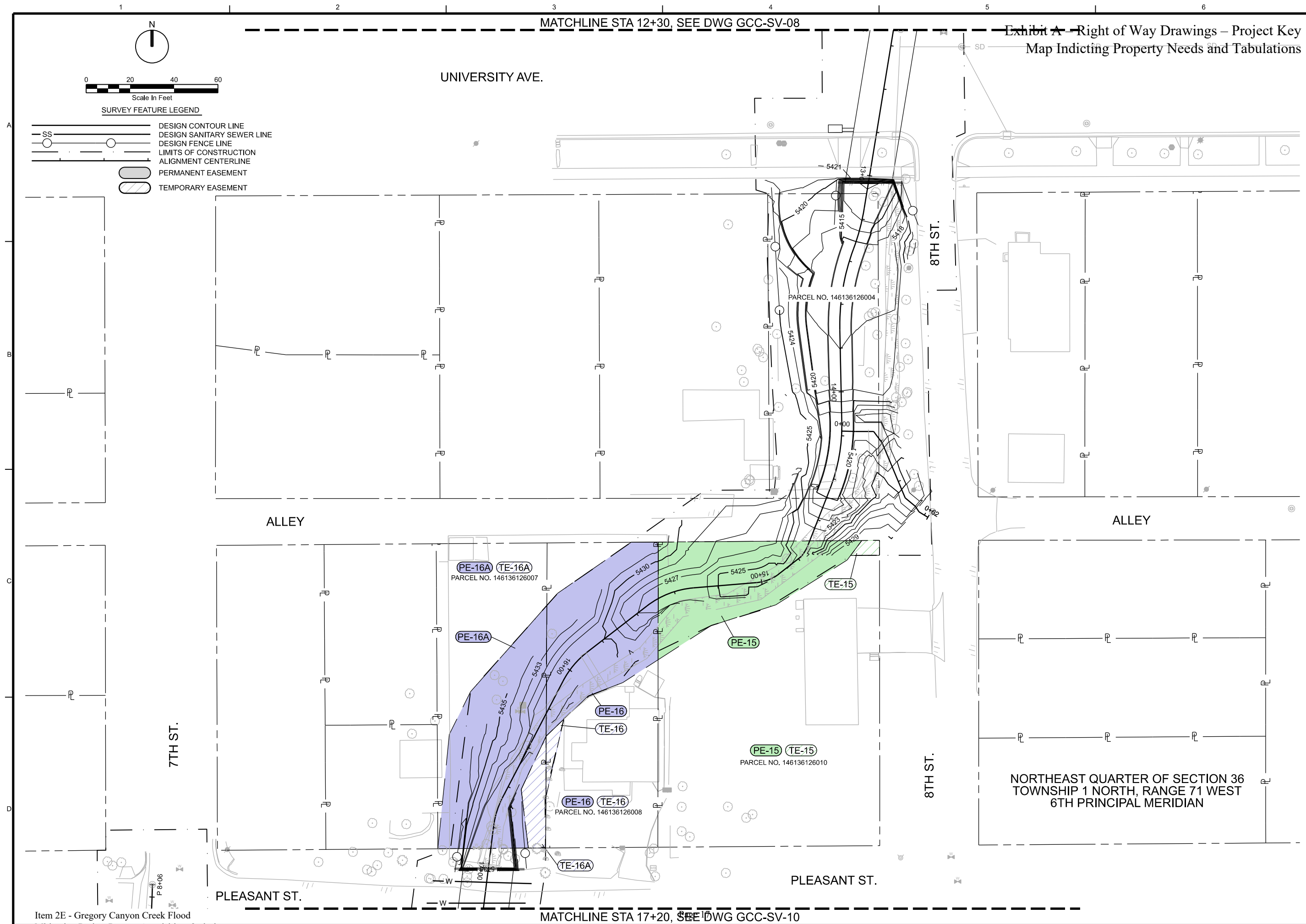
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SHEET 1 of 11



Item 2E - Gregory Canyon Creek Flood Mitigation Project Property Acquisition, 2nd rdg

<h1 style="margin: 0;">Jacobs</h1>		<p style="margin: 0;">GREGORY CANYON CREEK - ARAPAHOE AVE TO PENNSYLVANIA AVE</p> <p style="margin: 0; font-weight: bold; font-size: 1.2em;">PRELIMINARY RIGHT-OF-WAY PLANS</p> <p style="margin: 0; font-weight: bold; font-size: 1.2em;">TABULATION OF PROPERTIES</p>		<p style="margin: 0; font-weight: bold; font-size: 0.8em;">MILE HIGH FLOOD DISTRICT</p>		<p style="margin: 0; font-weight: bold; font-size: 0.8em;">CITY OF BOULDER</p>										<p style="margin: 0; font-weight: bold; font-size: 1.2em; transform: rotate(180deg);">NOT FOR CONSTRUCTION</p>									
<p style="margin: 0; font-weight: bold;">VERIFY SCALE</p> <p style="margin: 0;">0 1"</p>		<p style="margin: 0;">BAR IS ONE INCH ON ORIGINAL DRAWING.</p>		<p style="margin: 0;">NO. DATE</p>		<p style="margin: 0;">REVISION</p>		<p style="margin: 0;">BY APVD</p>		<p style="margin: 0;">APVD</p>		<p style="margin: 0;">APVD</p>		<p style="margin: 0;">A COOK</p>											
<p style="margin: 0;">DATE</p> <p style="margin: 0;">JUNE 2024</p>		<p style="margin: 0;">DR</p>		<p style="margin: 0;">CHK</p>		<p style="margin: 0;">R GUPTILL</p>		<p style="margin: 0;">R BRYSON</p>		<p style="margin: 0;">APVD</p>		<p style="margin: 0;">APVD</p>		<p style="margin: 0;">A COOK</p>											
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<p style="margin: 0;">SHEET</p> <p style="margin: 0;">3 of 11</p>		<p style="margin: 0; font-size: 0.8em;">REUSE OF DOCUMENTS: THIS DOCUMENT, AND THE IDEAS AND DESIGNS INCORPORATED HEREIN, AS AN INSTRUMENT OF PROFESSIONAL SERVICE, IS THE PROPERTY OF CH2M HILL AND IS NOT TO BE USED, IN WHOLE OR IN PART, FOR ANY OTHER PROJECT WITHOUT THE WRITTEN AUTHORIZATION OF CH2M HILL.</p> <p style="margin: 0; font-size: 0.8em;">©CH2M HILL 2018. ALL RIGHTS RESERVED.</p>																							

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