



Public Notice

**US Army Corps
of Engineers**
Fort Worth District

Applicant: NRG Texas Power, LLC

Permit Application No.: SWF-2007-00117

Date: April 17, 2009

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

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 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 under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Ms. Jennifer Walker

Phone Number: (817) 886-1863

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: Application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the construction of The Coal Combustion By-Products Disposal Area Development Project, an approximately 99-acre disposal development located north of County Road 795, east of FM 39, and south of Highway 80, in Freestone County, Texas.

APPLICANT: NRG Texas Power LLC
1301 McKinney, Suite 2300
Houston, Texas 77010

APPLICATION NUMBER: SWF-2007-00117

DATE ISSUED: April 15, 2009

LOCATION: The proposed Coal Combustion By-Products Disposal Area Development would be located on an approximately 99-acre tract north of County Road 795, east of FM 39, and south of Highway 80, in Freestone County, Texas. (Sheet 1 of 12) The proposed project would be located approximately at UTM coordinates 762726 East and 3481447 North (Zone 14) on the Donie 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12070103.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

PROJECT DESCRIPTION: The applicant proposed to discharge approximately 4,804 cubic yards of dredged and fill material into approximately 6 acres of waters of the United States in conjunction with the construction of the NRG Texas Power LLC, Coal Combustion By-Products Disposal Area Development. Total proposed impacts to waters of the U.S. include approximately 16.45 acres. The permanent impacts include: 0.06 acres of intermittent stream, 0.195 acres of ephemeral stream, and 5.83 acres of emergent wetlands. Temporary impacts associated with the removal of accumulated sediment from the intermittent perimeter channel would total approximately 10.37 acres.

The proposed project consists of developing the remaining portions of an existing industrial landfill. The landfill has been registered with Texas Commission on Environmental Quality (TCEQ) and contains coal combustion by-products (CCBPs). The active portion of the existing

landfill encompasses the approximate southern two-thirds of the TCEQ-approved landfill footprint. The project site consists of the remaining northern and southeastern portions of the approved landfill footprint. (Sheets 2 and 3 of 12) The project site is undeveloped, open pastureland with wooded areas along surface water features. The natural vegetation, soils, and/or hydrology of the site have been altered in some areas by landfill activities.

The landfill at the NRG Limestone Electric Generating Station is classified by TCEQ as a Class II Non-hazardous Disposal Area. The landfill is designed for the disposal of CCBPs and other miscellaneous Class II non-hazardous wastes. CCBPs result from the combustion of coal in a boiler associated with the production of electricity. CCBPs consist of fly ash, bottom ash, and flue gas desulfurization system (FGD) sludge. Miscellaneous Class II wastes consist of sludges from other ponds on the plant site such as storm water collection ponds, construction debris, etc. All disposed material is placed into the landfill in a dry state. As required by the TCEQ, no liquids will be placed in the landfill.

Historically, Lynn Creek and its associated tributaries extended south-southeast through the site. (Sheet 2 of 12) A perimeter channel extends around all but the northeastern portion of the site and routes water around the landfill and to the south. It appears that the drainage from the tributaries historically flowed south toward Lynn Creek; however, the drainage has been captured in the aforementioned perimeter channel and routes the water westward around the landfill and discharges to Lynn Creek offsite. A portion of Lynn Creek has been captured in the aforementioned perimeter channel and is routed to the southwest and into the offsite portion of Lynn Creek. Therefore, the perimeter drainage channel is considered to contain the rerouted streams and is jurisdictional.

Lynn Creek (intermittent), three unnamed ephemeral tributaries (Tributaries 1, 1A, 2), and three wetland areas (Wetland A, B, C) were identified onsite (Sheets 4 and 5 of 12). Wetland areas A and B, and Tributaries 1, 1A, and 2 are located in the northern portion of the site. Tributary 1, the northernmost stream, flows southwest from the gravel road; Tributary 1A flows southwest and into Tributary 1; and Tributary 2 flows to the west. Tributaries 1 and 2 connect to Wetland A. Wetland B is located adjacent on the south end of Wetland A. The jurisdictional perimeter channel connects to the northwestern portion of Wetland B and drains southwest. The majority of Wetland B, primarily the center portion, is open water. The northern portion of Wetland B and the remaining fringe around the open water consists of emergent vegetation. Wetland C and Lynn Creek are located in the southeastern portion of the site. Wetland C is located at the northern end of Lynn Creek. Lynn Creek flows southwest into the jurisdictional perimeter channel, which flows to the southwest.

Table 1. Summary of Impact to Waters of the U.S. at the Coal Combustion By-Products Disposal Area Development

Name of Impacted Jurisdictional Water	Type of Jurisdictional Water	Type of Impact		Length (feet)	Area (acres)
Lynn Creek	Intermittent Stream	Permanent	Fill	780	0.060
Tributary 1	Ephemeral Stream	Permanent	Fill	750	0.170
Tributary 1A	Ephemeral Stream	Permanent	Fill	60	0.005
Tributary 2	Ephemeral Stream	Permanent	Fill	285	0.019
Wetland A	Wetland	Permanent	Fill	--	0.274
Wetland B	Wetland	Permanent	Fill	--	5.520
Wetland C	Wetland	Permanent	Fill	--	0.030
Perimeter Channel	Intermittent Stream	Temporary	Removal of accumulated sediment	15,035	10.37
Total permanent impact to waters of the U.S.				1,875	6.08
Total temporary impacts to waters of the U.S.				15,035	10.37
Total impacts to waters of the U.S.				16,910	16.45

The existing landfill is reaching capacity, so the remaining TCEQ-approved disposal area would be developed in compliance with the facility’s existing TCEQ solid waste registration. The applicant evaluated avoidance of jurisdictional waters on the site when preparing the site development plans for the facility and associated coal combustion by-products disposal area; however, the disposal requirements and transport needs necessitated the location of the development area on the project site. Therefore, the applicant determined that avoidance of jurisdictional waters for the permitted landfill footprint, including the development area, would not be possible.

Evaluation of Alternatives

Proposed Alternative

The proposed alternative is to construct the project as described herein (Sheets 6 through 8 of 12) and mitigate on NRG property near the project site for the unavoidable impacts to waters of the U.S. This alternative is preferred by the applicant because; it fulfills the project purpose while balancing adverse impacts with an appropriate level of compensatory mitigation. Furthermore, this alternative would restore/improve a highly degraded landscape and leaves a functional habitat area for local wildlife in place.

Not Develop the Property therefore not Impact Waters of the U.S.

Not developing the property was rejected because NRG must maintain compliance with their TCEQ Solid Waste Registration for disposal of coal combustion by-products.

Develop Property with Smaller Disposal Development Area without Impacting Waters of the U.S.

A smaller disposal cell was rejected because it did not provide sufficient disposal capacity as required by TCEQ registration.

Develop the Property as Proposed and Purchase Mitigation Credits

Purchasing Mitigation Bank credits was rejected based on the amount of property currently owned by NRG. NRG owns over 1,000 acres of undeveloped land which is located within the same immediate watershed as the project site. Based on the applicant's ownership of sizable acreage in the same watershed, mitigation within their property holdings was more ecologically beneficial than purchasing credits located in a different area.

Permanent impacts would be minimized by limiting the disturbance to only the areas necessary to dispose of the coal combustion by-products in accordance with the TCEQ solid waste provisions. The existing perimeter channel would not be adversely impacted by development activities and would continue to convey the waters of Lynn Creek and its tributaries off-site.

Temporary impacts would be minimized by adhering to a Storm Water Pollution Prevention Plan (SWPPP) developed for the site. The SWPPP would include best management practices to control erosion and sediment transport off the site.

Storm water management at the landfill would be authorized by TCEQ permits. During construction phases, storm water run off would be authorized by a Texas Pollutant Discharge Elimination System (TPDES) Construction Storm Water Permit. As the landfill is developed, storm water that runs off from a closed section of the landfill (perimeter or other closed section) would be authorized by a TPDES Industrial Multi-Sector General Permit. Storm water that runs off from an open section of the landfill, where the material is being landfilled, would be routed to a pond that is part of the plant's industrial wastewater permit, TPDES Permit No. 02430.

Mitigation Area

Compensation for impacts to jurisdictional waters from the proposed project would be wholly accomplished by mitigation activities at an adjacent, upstream property also owned by NRG. (Sheets 9 and 10 of 12) The jurisdictional waters proposed to be impacted would be replaced with an in-kind system consisting of the construction of 1,782 lf of ephemeral stream system, 1,557 lf of ephemeral stream channel within a large wetland area, and construction of 6.62 acres of wetlands, and three areas of open water totaling 1 acre (Sheets 11 and 12 of 12).

The open water and wetland areas would have a natural substrate bottom and would provide open water habitat for area wildlife. The wetlands and the areas along the stream bank would be planted with native, water-tolerant vegetation to provide riparian habitat in these areas. The design of the project would be such that the banks would be flooded periodically (several times a year) to provide these areas with the water and nutrients required to develop a functioning riparian ecosystem. The pre-project functions of the riparian area on the stream banks and wetlands on the project site are expected to be recreated in the mitigation area. The mitigation areas would consist of one main stream channel with two branches, for a total of three stream segments. Each stream segment would support an in-stream pond and wetland areas. The system would be designed with adjustable water control structures (weirs) at strategic locations to ensure stream flow is regulated between stream systems at branching of streams and the exits

from ponds and wetland areas. The weirs in streams are designed to regulate the amount of water entering each branch to ensure each branch has adequate flow. Weirs downstream of ponds and wetlands would ensure water is retained in ponds and wetland areas. In the western wetland area, a stream would meander through the wetland in order to increase the length of stream and flood adjacent wetlands in the mitigation area.

The proposed mitigation site consists entirely of uplands as determined by a “Delineation of Waters of the United States” report developed by KBA dated March 2008. Approximately 3,339 lf of jurisdictional ephemeral stream and 6.62 acres of jurisdictional wetland would be created in this area. A summary of the mitigation proposed for this project is included in **Table 2**.

Currently, the mitigation area is highly disturbed land largely void of vegetation due to excavation for clay. Plant species would be utilized that have a wide range of flood and drought tolerance. These species would ensure a self-sustaining community is established which offers riparian habitat that can be used by area wildlife. A euryhydric community would be necessary because the banks would remain dry for a portion of the year but would also be flooded during some rain events and saturated for long periods.

Table 2. Summary of Mitigation Activities for the Coal Combustion By-products Disposal Area Development

Mitigation Activity	Length of Waters Benefited (feet)	Area of Waters Benefited (acres)	Mitigation Area (acres)
Ephemeral Stream Created Outside Wetland	1,782	0.12	0.12
Ephemeral Stream Created Within Wetland	1,557	0.07	0.07
Wetland Created	--	6.62	6.62
Riparian Area Created	1,782	6.81	7.19
Total Mitigation	3,339	6.81	14.00

The area proposed for the mitigation area is wholly owned by the applicant and has no liens or other encumbrances attached to it.

PUBLIC INTEREST REVIEW FACTORS: This application would be reviewed in accordance with 33 CFR 320-332, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation would also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit would be based on an evaluation

of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision would reflect the national concerns for both protection and utilization of important resources. The benefits 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 would be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE 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 would be considered by the USACE in determining whether to issue; issue with modifications or conditions; 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.

STATE WATER QUALITY CERTIFICATION: This project results 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 not fulfill Tier I criteria for the project. Therefore, Texas Commission on Environmental Quality (TCEQ) certification is required. Concurrent with USACE 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 USACE 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. The TCEQ may conduct a public meeting to consider all comments concerning water quality if requested in writing. A request for a public meeting 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, adversely affected such interest.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine whether any may occur in the project area. The proposed project would be located in Freestone

where the bald eagle (*Haliaeetus leucocephala*), least tern (*Sterna antillarum*) the whooping crane (*Grus Americana*), large-fruited sand verbena (*Ambronina macrocorpa*), and Navasota ladies'-tresses (*Spiranthes parksii*) are known to occur. The least tern, whooping crane, large-fruited sand verbena, Navasota ladies'-tresses are endangered species. The bald eagle is a federally de-listed species and its populations and recovery are being monitored. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

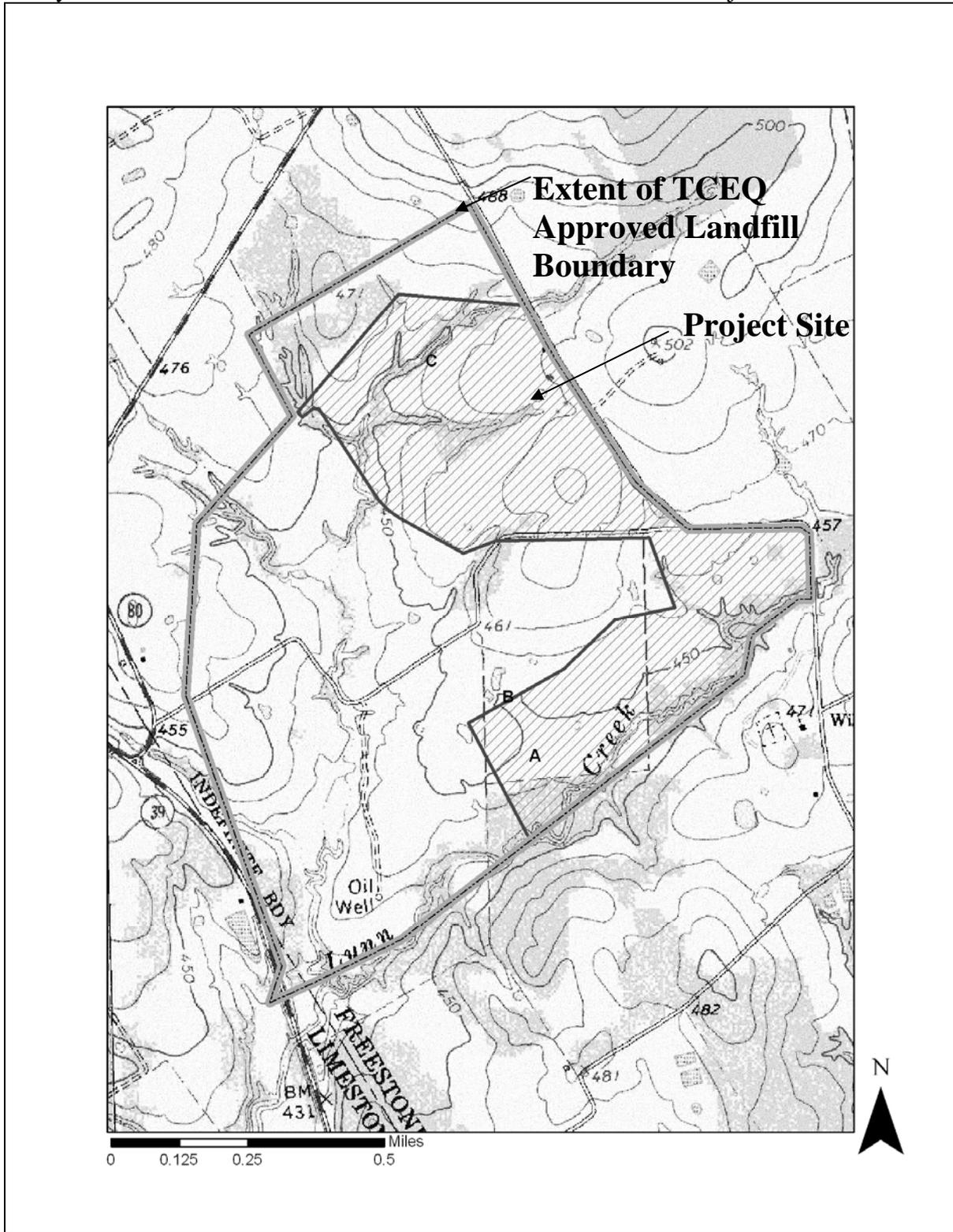
FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review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

SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing facts upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

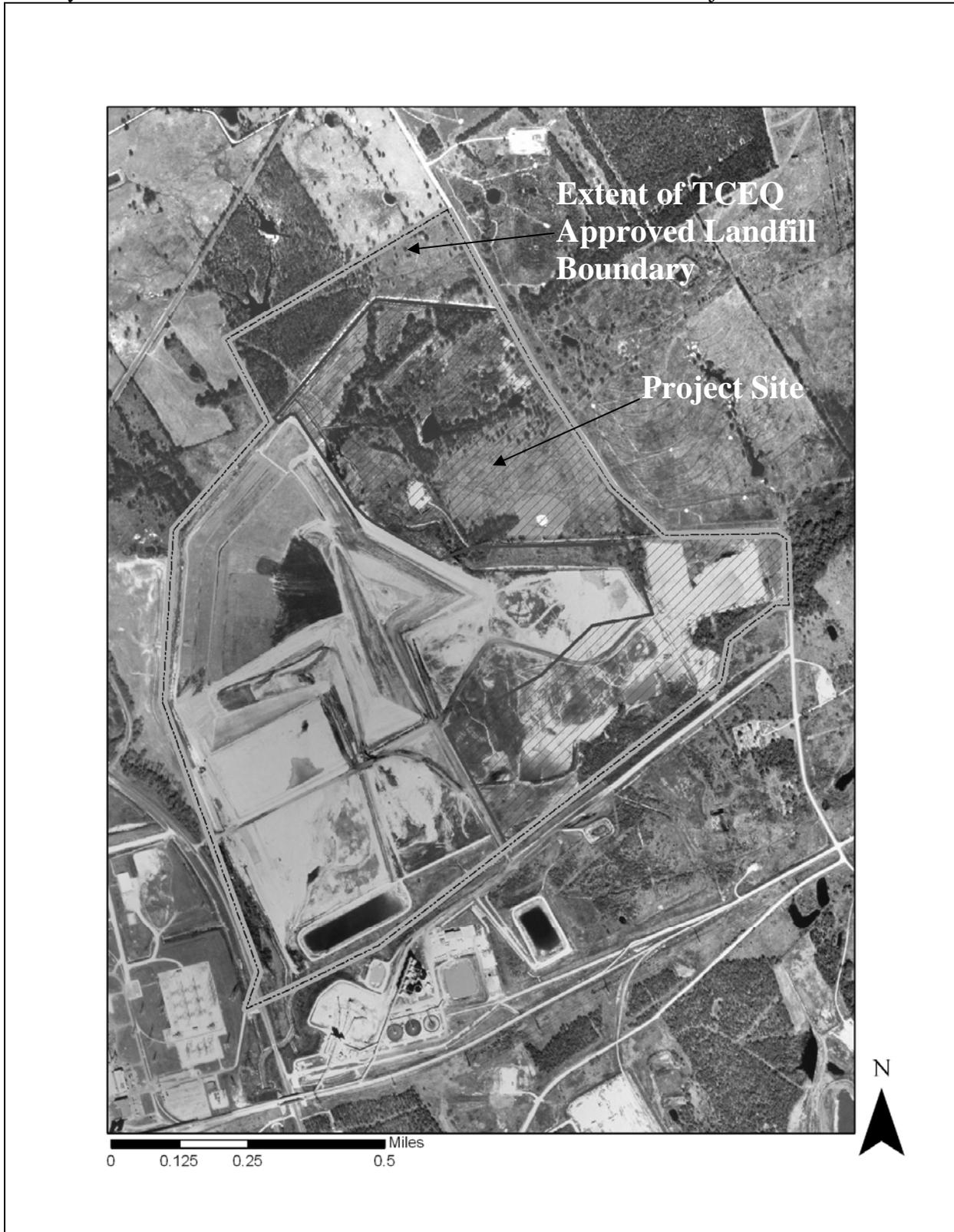
PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer would determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons would be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before May 17, 2009, 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 would be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Wayne Lea; Regulatory Branch, CESWF-PER-R; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. You may visit the Regulatory Branch in Room 3A37 of the Federal Building at 819 Taylor Street in Fort Worth between 8:00 A.M. and 3:30 P.M., Monday through Friday. Telephone inquiries should be directed to (817) 886-1863. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

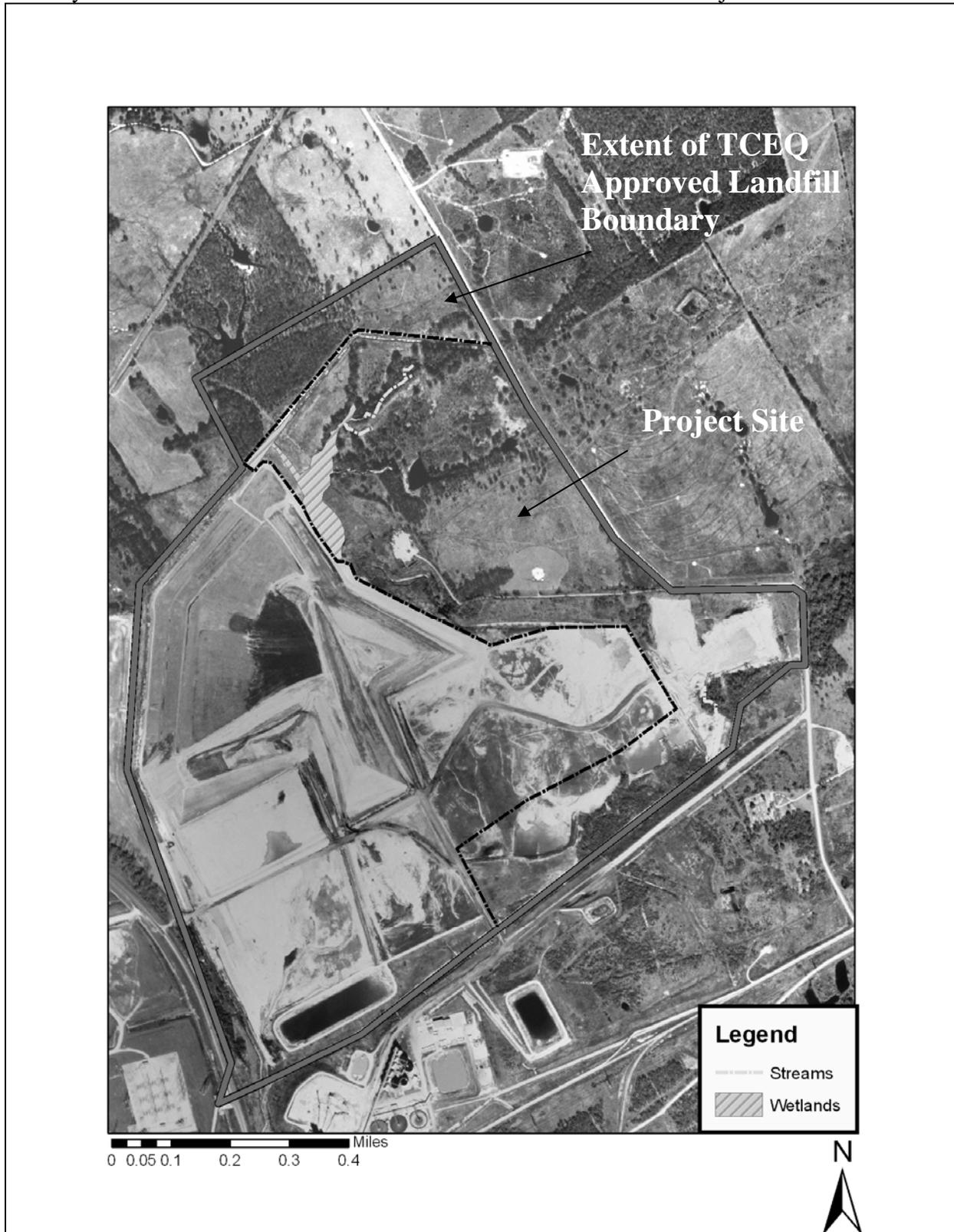
**DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS**



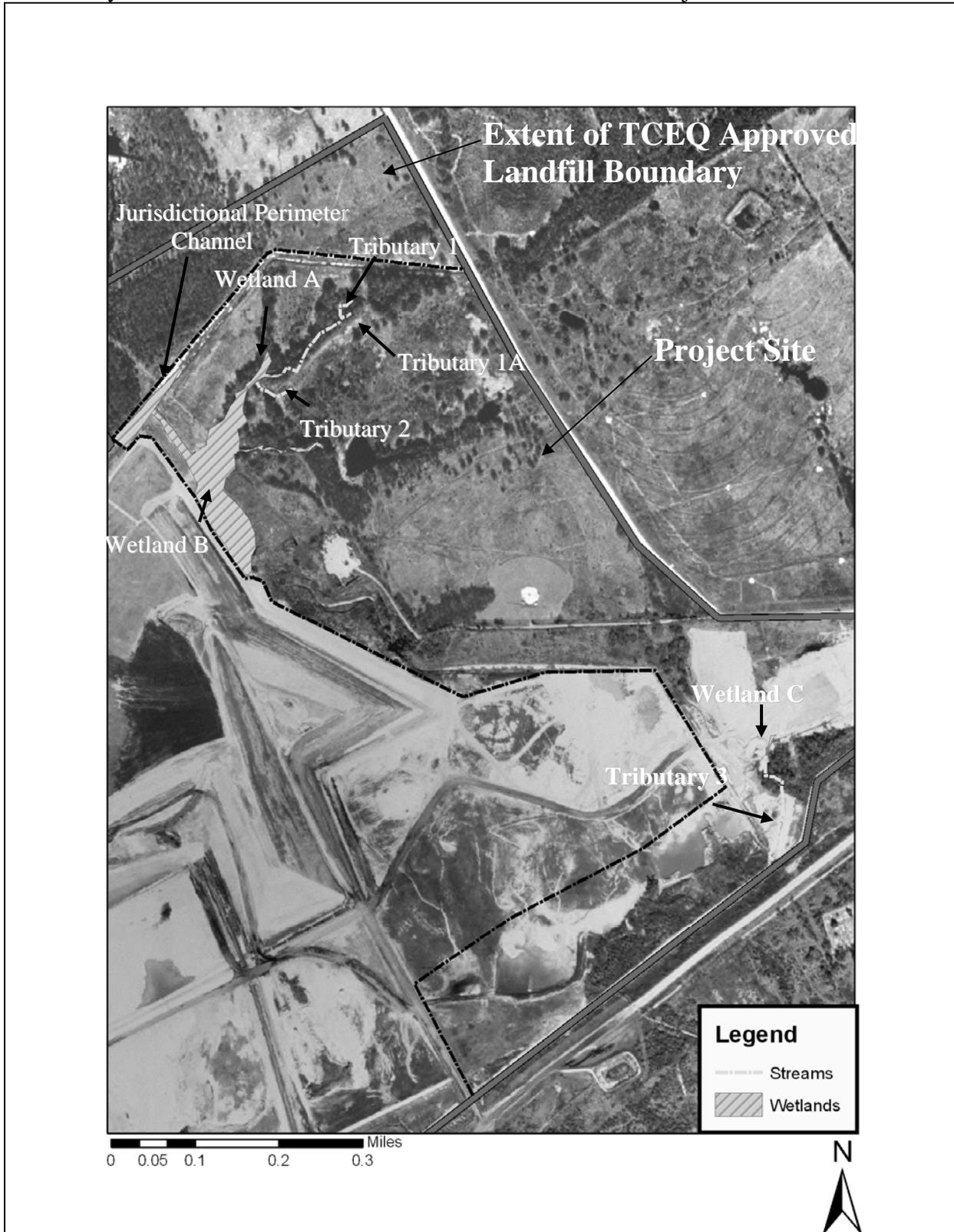
Sheet 2 of 12. USGS Topographic Map (Freestone County Mosaic, Texas, NRCS 2006) for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



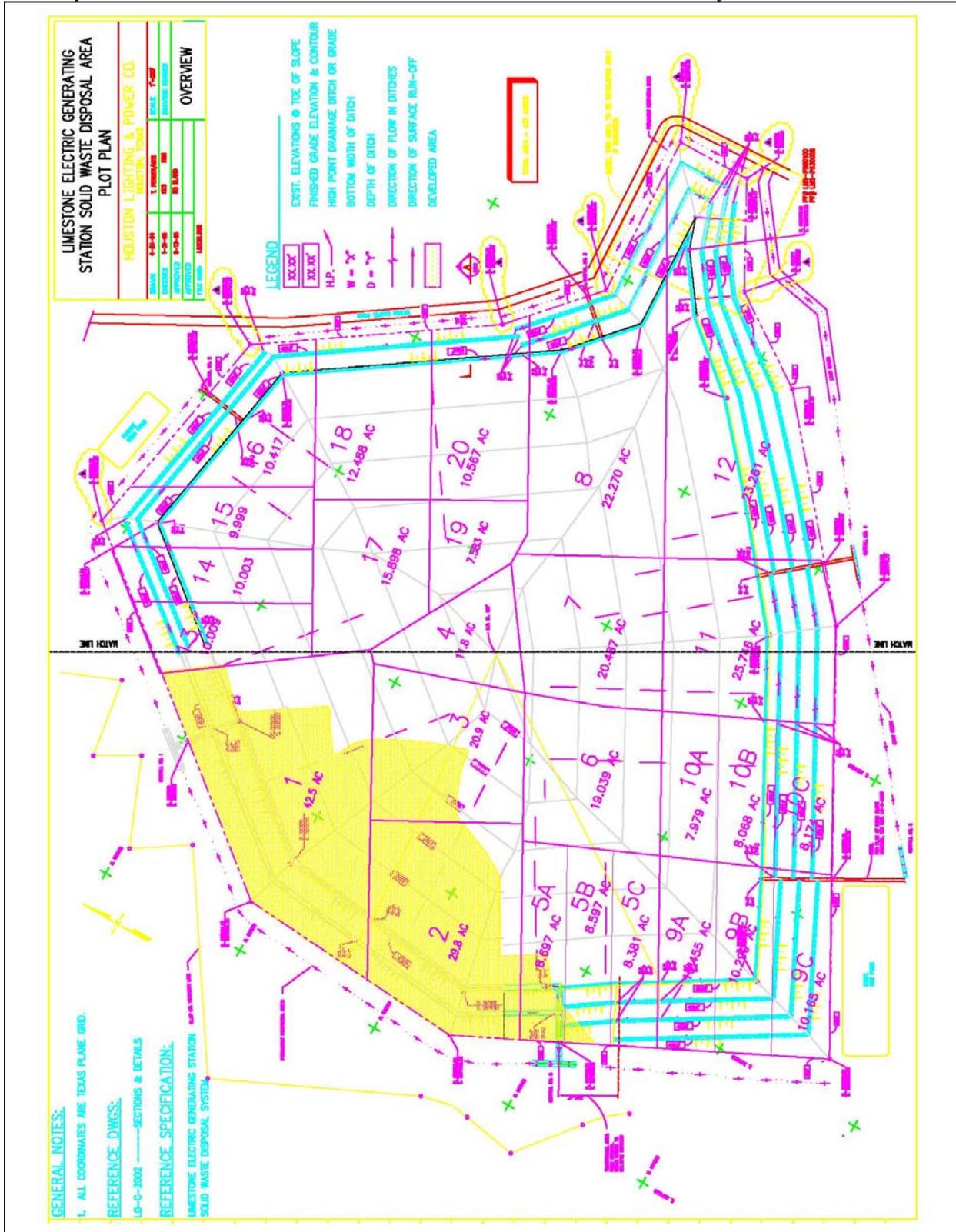
Sheet 3 of 12. Location of the 404 permit boundaries for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



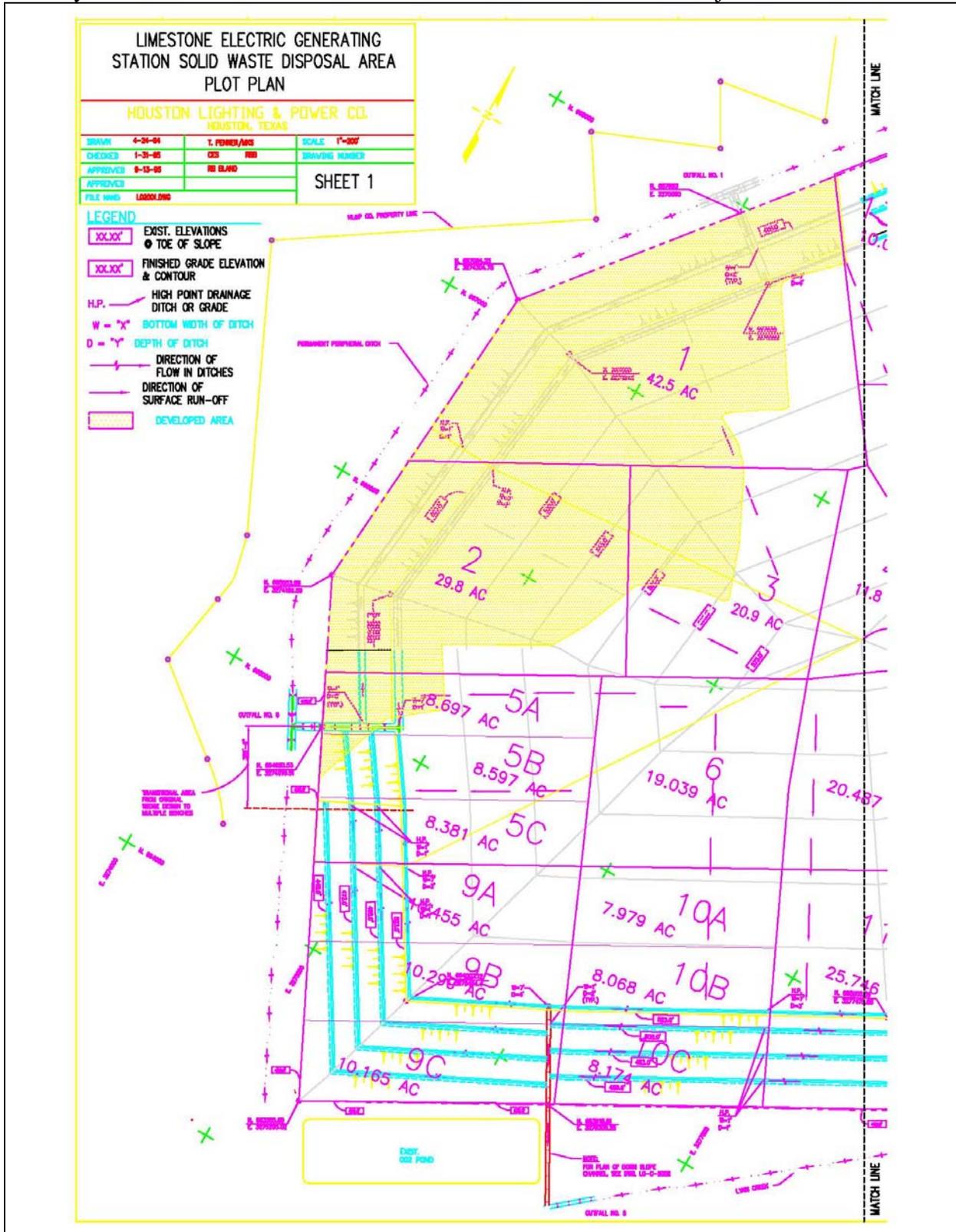
Sheet 4 of 12. Waters of the U.S. for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



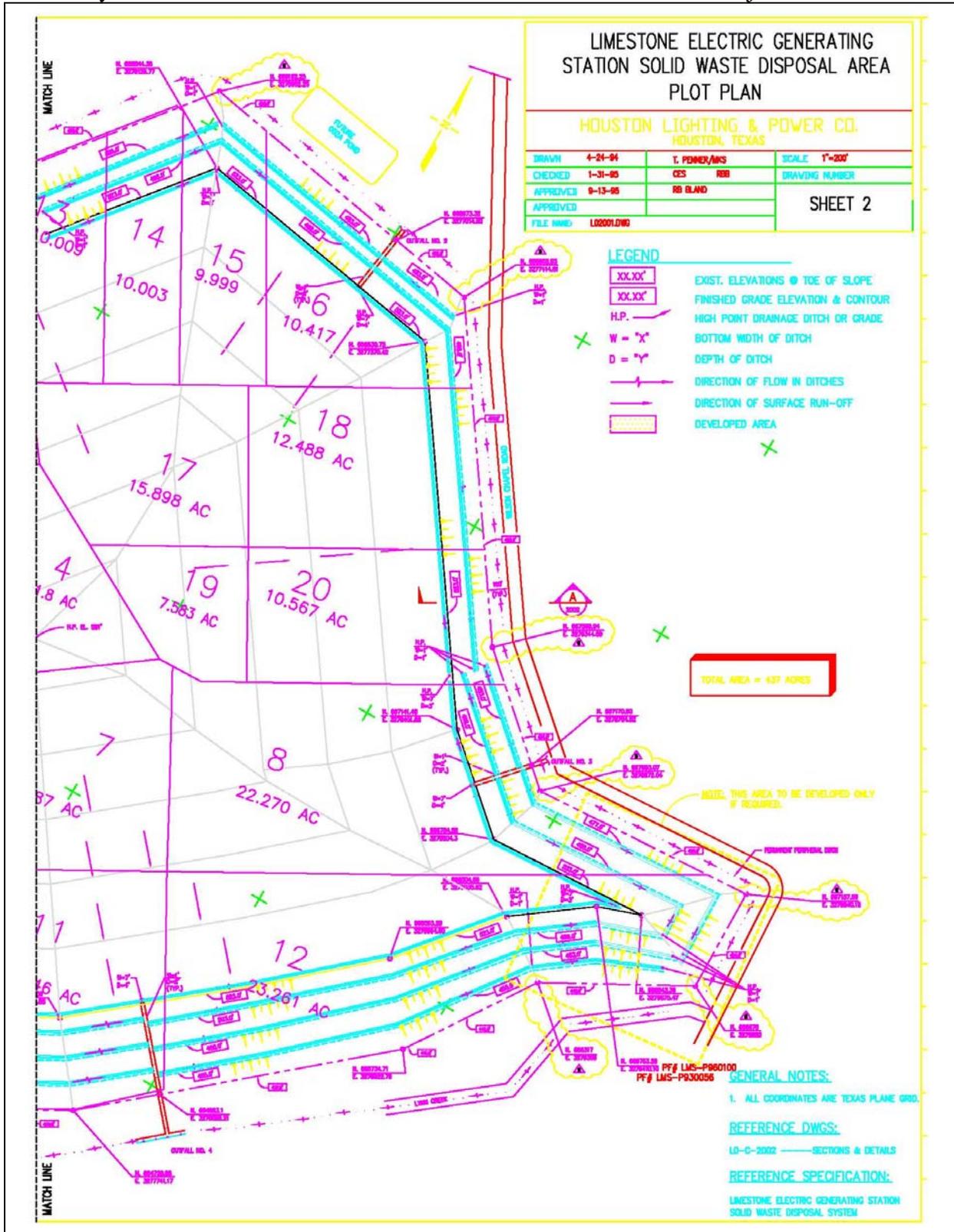
Sheet 5 of 12. Waters of the U.S. and Delineation Transects for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



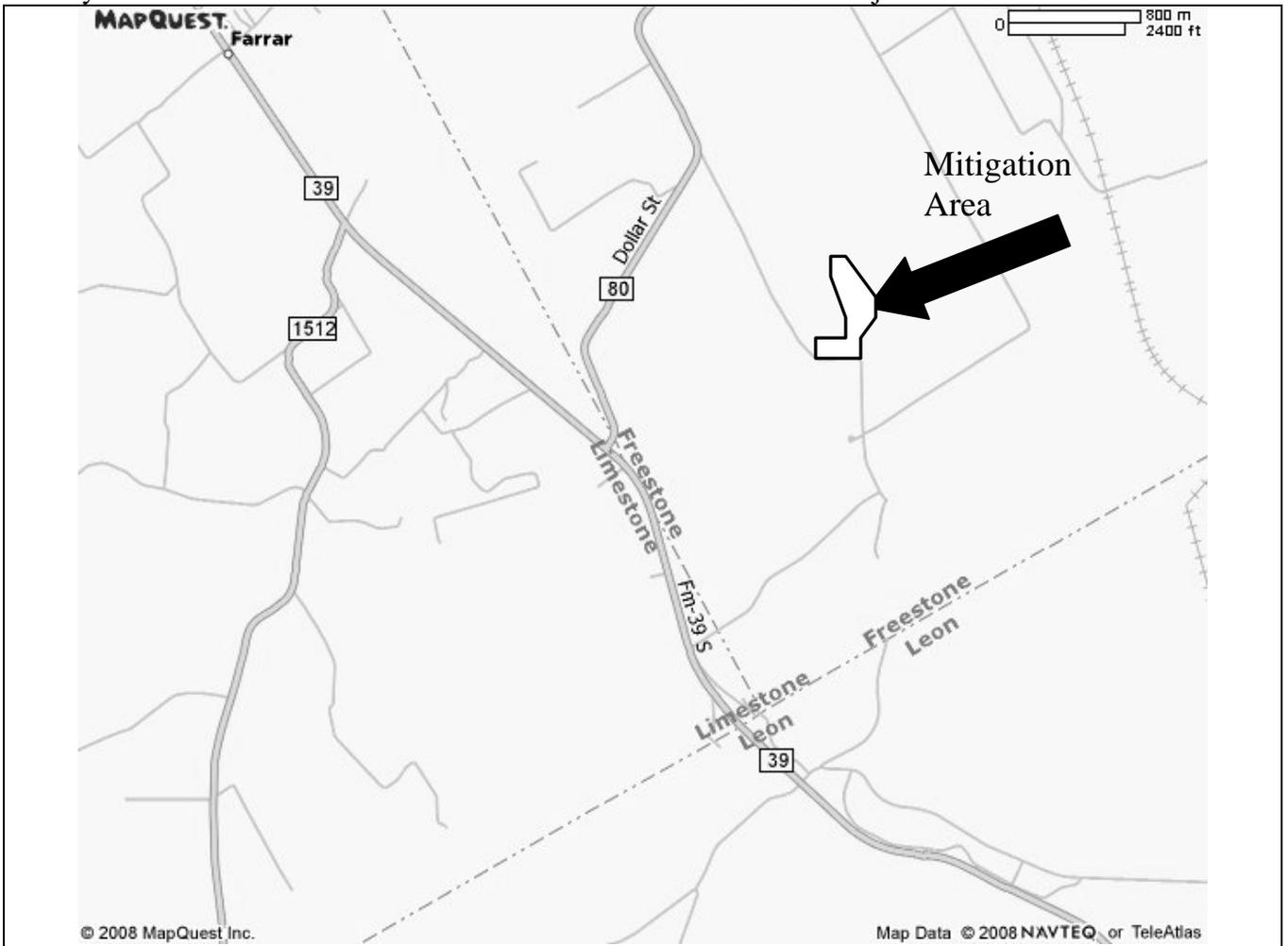
Sheet 6 of 12. Construction Drawing Overview for Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



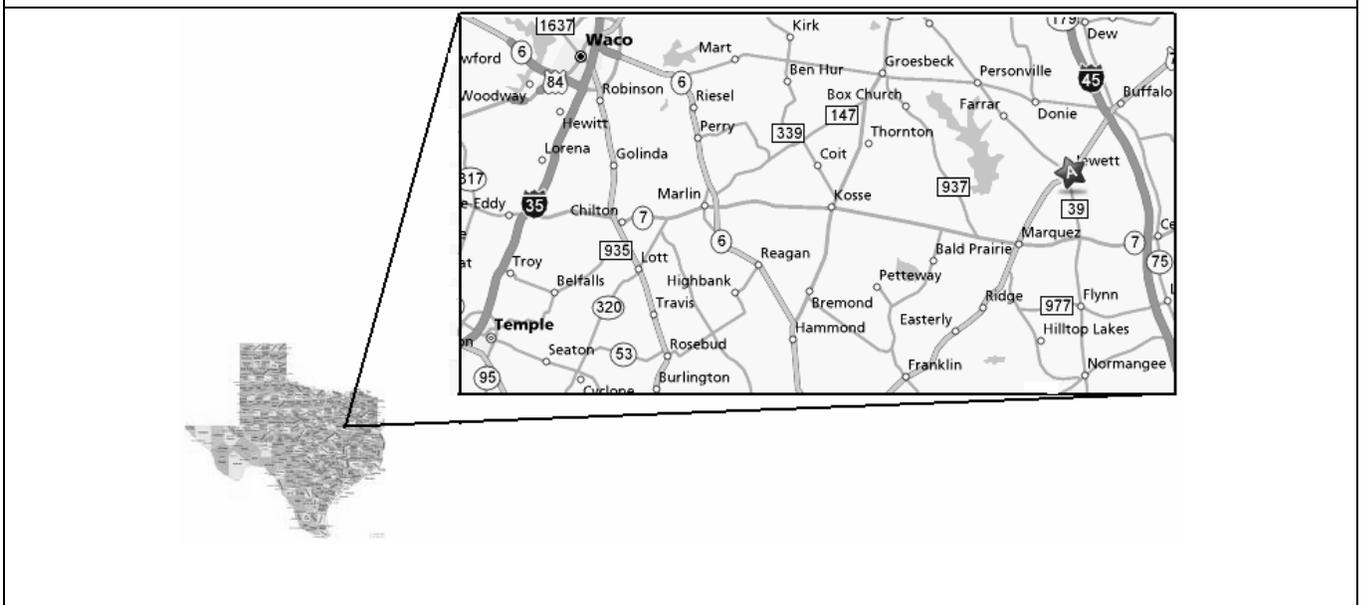
Sheet 7 of 12. Construction Drawing for Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.

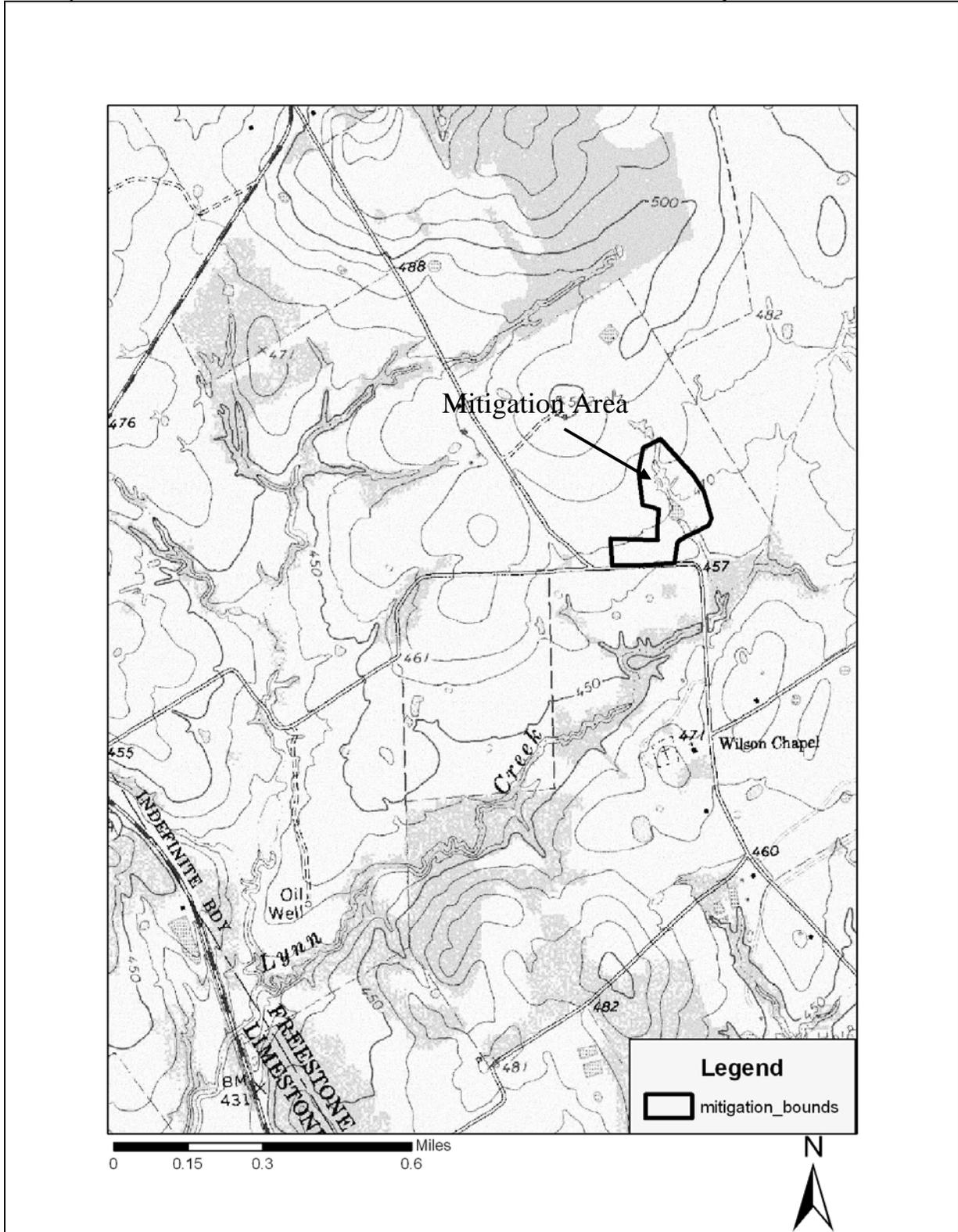


Sheet 8 of 12. Construction Drawing for Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.

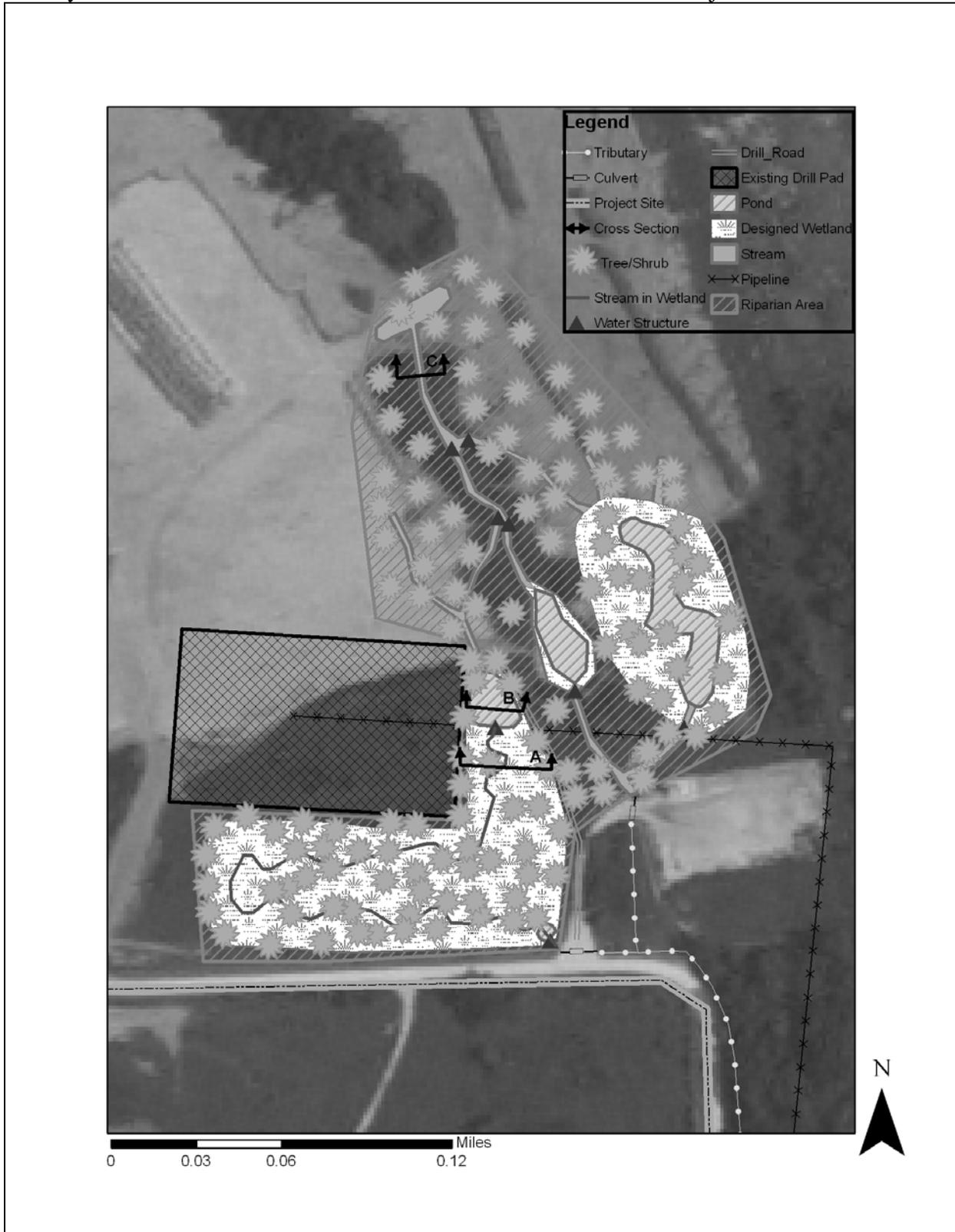


Sheet 9 of 12. Site Location Map for the NRG Mitigation Area, Freestone County, Texas.

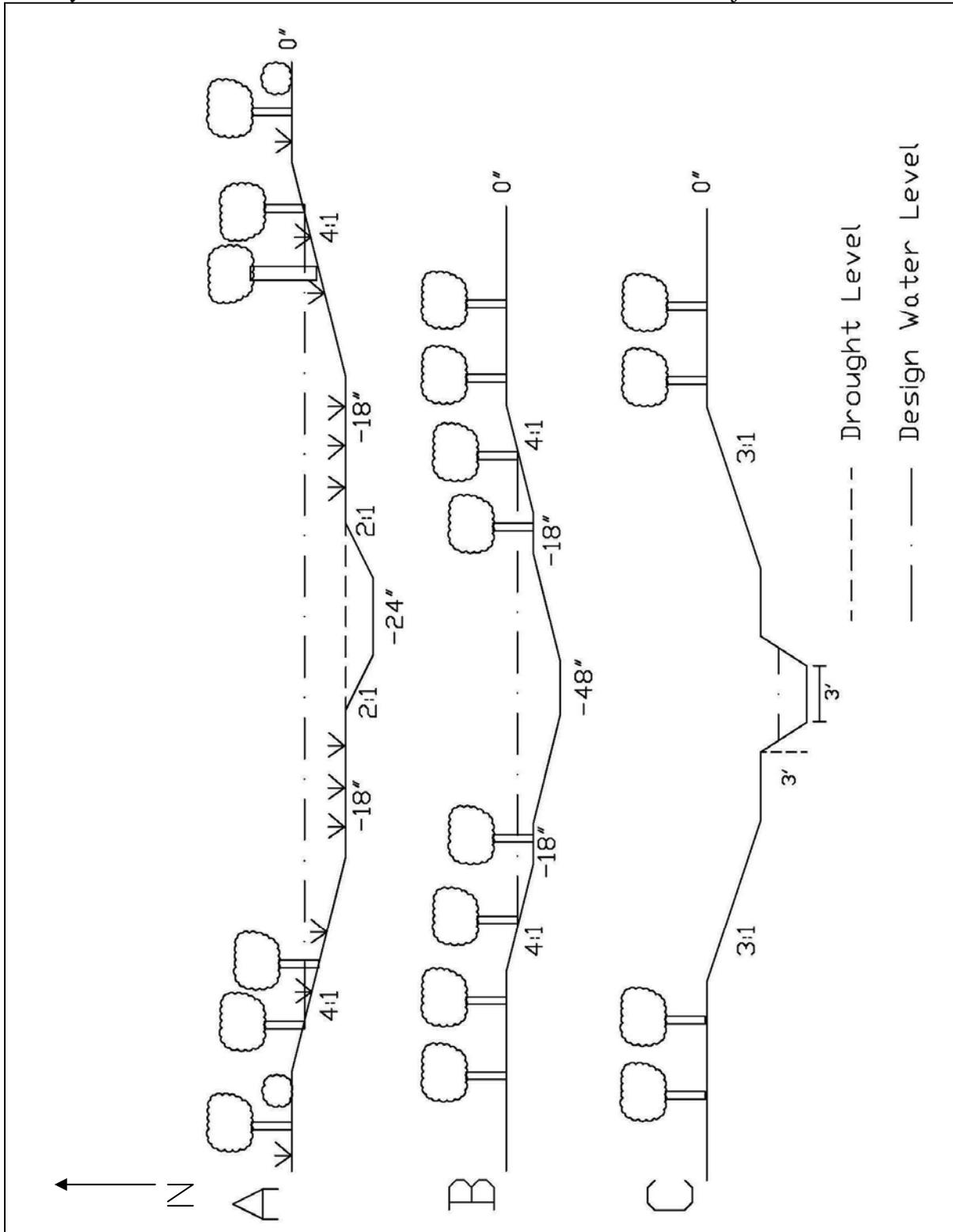




Sheet 10 of 12. USGS Topographic Map (Freestone County Mosaic, Texas NRCS 2006) for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development Mitigation Area, Freestone County, Texas.



Sheet 11 of 12. Mitigation Area Design for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.



Not to Scale

Sheet 12 of 12. Cross Section of the Mitigation Design (see Sheet 11 of 12) for the NRG Limestone Electric Generation Station Coal Combustion By-products Disposal Area Development, Freestone County, Texas.