

Attachment A

EXCISE ENACTED COPY
Contract Administration Unit
AGMT: 4435-M FILE: N/A

File: City of Morgan Hill
Upper Llagas Creek
Flood Protection Project

JOINT USE AGREEMENT

Between

City of Morgan Hill and Santa Clara Valley Water District

For

West Little Llagas Creek between Monterey Road and Ciolino Avenue

In association with the Upper Llagas Creek Flood Protection Project

SANTA CLARA VALLEY WATER DISTRICT, a California Special District created by the California Legislature, hereinafter referred to as "District;" and CITY OF MORGAN HILL, a municipal corporation of the County of Santa Clara, hereinafter referred to as "City", AGREE as follows:

RECITALS:

- A. WHEREAS, District is the owner of certain real property (hereinafter "the Premises"), shown on "Exhibit A" attached hereto, so marked and by this reference made a part hereof. The Premises are located along West Little Llagas Creek from Monterey Road northwesterly to Ciolino Avenue within the City of Morgan Hill; and
- B. WHEREAS, on June 10, 2014, District's Board of Directors certified a Final Environmental Impact Report (Final EIR) and approved its Upper Llagas Creek Flood Protection Project (District Project) as lead agency pursuant to the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.); and
- C. WHEREAS, District is currently proceeding with the permitting phase of its Upper Llagas Creek Flood Project (District Project), within its right-of-way. After permits are issued, District will subsequently advertise for bids and award contracts for construction of the District Project anticipated to take an estimated five (5) years to complete construction; and
- D. WHEREAS, the District is required to maintain the District Project in accordance with the Resource Agency approved Mitigation and Monitoring Plan (MMP) for a 10-year period following completion of construction needed to meet required success criteria, including a 3-year mitigation planting establishment period; and
- E. WHEREAS, District shall grant a conservation easement to the City within a portion of the Premises in accordance with pending execution of the purchase and sale agreement by and between the District and County of Santa Clara for an approximately 53-acre property commonly known as Lake Silveira, located with the City of Morgan Hill (APN's 779-03-114, 779-06-030, 779-49-014, and 779-06-032) (Conservation Easement); and

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- F. WHEREAS, District shall also grant a perpetual wetlands mitigation easement to a grantee designated by the United States Army Corps of Engineers over and up to sixteen acres (Mitigation Easement) entirely within the Conservation Easement; and
- G. WHEREAS, the Conservation Easement is subordinate to the Mitigation Easement; and
- H. WHEREAS, City has an interest in using Premises after the construction of District Project to enable City to provide certain recreational opportunities to the public that do not unreasonably interfere with the District's mission of flood protection, water resource management, and stream stewardship; and
- I. WHEREAS, the parties have previously executed the following Joint Use Agreements (JUA) along West Little Liagas Creek that will be superseded upon the execution of this Agreement:
 - a. A2905M (Portion): Edmundson Avenue to LaCrosse Drive executed 12/20/2004 for a term of 25 years;
 - b. A3046RE: Edes Court and Edmundson Avenue executed 7/11/2006 for a term of 25 years;
 - c. A3221M: LaCrosse Drive to Watsonville Road executed 9/9/2008 for a term of 25 years;
 - d. A3414M: Edes Court to Spring Avenue executed 10/26/2010 for a term of 25 years; and
- J. WHEREAS, the parties find it to be in the public interest to provide for joint use of the Premises by means of an Agreement under the following terms and conditions;

Now, therefore, the parties agree as follows:

- 1) **Scope of the License Grant to City.** Subject to the terms and conditions of this Agreement, and contingent upon District's grant of a conservation easement to City as set forth above, District hereby grants to City a non-exclusive license to access and do any or all of the following on the Premises:
 - a. To construct, operate, maintain, repair, replace, and remove City Improvements for recreational purposes on the Premises including, but not limited to, asphalt concrete surfaced pedestrian and bicycle trails, pedestrian bridges, fencing, fixture (trash receptacles, benches etc.) and signage. The construction of such City Improvements shall require prior review and approval by District as signified by issuance of a Water Resources Protection Ordinance Encroachment Permit ("District Permit"), and shall be compliant with all applicable legal and permitting requirements. It is fully understood and agreed that District in its reasonable discretion may approve or disapprove a request for any permit to construct any City Improvement on the Premises.

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- b. To provide non-motorized bicycling, walking, jogging and hiking activities in accordance with all applicable legal and permitting requirements to the extent such activities do not interfere with the District's mission of flood protection, water resource management, and stream stewardship.
 - c. To host special recreational events (e.g., races) that may include an otherwise restricted component such as allowing private vehicular access for safety purposes, so long as City first receives a District Permit to host that event.
- 2) **Subordination to Conservation Easement and Mitigation Easement.** To the extent this Joint Use Agreement conflicts with any provisions of the Mitigation Easement, the terms of the Mitigation Easement shall prevail. To the extent this Joint Use Agreement conflicts with any provision of the Conservation Easement, the terms of the Conservation Easement shall prevail. To the extent this Joint Use Agreement conflicts with any provisions of the MMP, the terms of the MMP shall prevail.
- 3) **Prohibited Uses of Trail.** City shall post notices at all trail entrances that notify users of the trail that the following activities are prohibited:
- Entry of motor vehicles (except for maintenance, emergency, and enforcement vehicles and mobility devices otherwise allowed by law)
 - Unleashed dogs

Subject to the foregoing prohibitions and any other restrictions set forth in this Agreement, City shall have the sole authority to adopt any trail rules and regulations pursuant to City of Morgan Hill Municipal Code for any City Improvements on the Premises that will not interfere with District's mission of flood protection, water resource management, and stream stewardship.

- 4) **Trash and Litter Removal.** City will provide for trash removal on the Premises that is reasonably likely to have been generated from the public's use of the Trail or access to the Premises. City will be responsible for providing sufficient number of trash receptacles, timely maintaining, servicing, emptying trash receptacles, including removing litter/trash and rubbish removal not properly disposed in the receptacles as reasonably necessary. The District is required under the terms of the Mitigation Easement and MMP to ensure trash does not compromise the health and ecological viability of the created wetlands, so District reserves the right, at City's expense, to conduct trash removal within the Conservation Easement if the City fails to properly and routinely remove trash and debris generated from the public's use to the level required under the terms of the Mitigation Easement and MMP. District will notify City in terms of Article 20 of this Agreement prior to conducting this corrective action.

District will manage any Adopt-A-Creek program within the Premises.

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- 5) **Vegetation Management.** If existing vegetation impacts the trail use, then City is responsible for vegetation removal and maintenance, as City deems necessary while in accordance with the terms and conditions of the Conservation Easement. City shall not conduct any vegetation removal and maintenance that is not compatible or consistent with the terms and conditions of Mitigation Easement and MMP for the District Project, per Article 2 of this Agreement.
- 6) **Graffiti Removal.** City will provide graffiti removal in compliance with City's graffiti abatement program, including graffiti removal from walls, signs, etc. installed in conjunction with and/or accessory to the establishment of a public pathway consistent with its implementation of the same program at comparable City facilities. City will have the primary responsibility for removal of graffiti, on the Premises, reasonably attributed to trail use. No permit from District, nor any advance notice, will be required for City to provide the routine removal of graffiti from any City or District facility within the length of the West Little Llagas Creek included within this agreement. Any and all materials used by City in the removal of graffiti within the limits of this agreement shall be approved for use in the State of California, environmentally safe products, which will not impact the West Little Llagas Creek environment in any way.
- 7) **Security.** The premises will be reasonably patrolled by City personnel and/or volunteers supervised by City, at the level of Public Safety that is afforded to all areas of the City. District has no obligations whatsoever to provide or pay for any such patrol services. City shall cooperate and coordinate with District in District's efforts to remove any illegal encampments on the premises, and City shall provide police security during such removal activities at no charge to District.
- 8) **Public Complaints.** City is responsible for responding to all public complaints and inquiries regarding City's improvements on the Premises, including the public trail, and to all inquiries regarding the public's use of the Premises.
- 9) **Removal or Relocation of City Improvements.** If District requires that any City improvement on Premises be removed or relocated for any District purpose, City will do so at its own expense within 90 days of receiving notice from District. If removal or relocation of City improvements, including vegetation installed by City, requires mitigation under the California Environmental Quality Act, City will be responsible for all costs required to fulfill any required mitigation responsibilities. District will inform City during preconstruction planning in the event a District project is performed on the Premises, in order to reasonably minimize District's project impact on City's improvements located on the Premises. In the event a District project is constructed, any replacement of City's trail and amenities will be the responsibility of City, subject to District approval.
- 10) **Water Level Fluctuations.** It is expressly understood by City that the level of water upon the Premises may fluctuate from day to day due to controlled or uncontrolled flows upon and across the same. City is responsible for the control of or limiting the public's use of Premises because of such water levels, flood flows, or for any other reason (i.e. harmful algal blooms).

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City is responsible for determining the conditions under which to exercise said control or to limit the use of the Premises to ensure the health and safety of the public using the Premises.

- 11) **Signage.** The District is required under the terms and conditions of the Mitigation Easement to install wetland habitat "sensitive area signage". For all other signage, the parties will cooperate to create and install signage that benefits the programs of each party such as warnings, entrance signage, interpretive signs and benches, and joint uses when applicable. The Deputy Operating Officer designated by District and the Community Services Director of City or their respective designees will meet and confer on a periodic basis to plan the installation of appropriate signage which serves the needs of both parties. All signs placed on the Premises by City (except existing signs that identify the facility (e.g. Trail) by name) must include District's logo in equal size and symmetrical relationship to any other logos contained on such signs. In addition, all City signs or City publications placed on the Premises that describe water resources must be developed in conjunction with District's Watershed customer relations staff. Each party is responsible for the maintenance and upkeep of its signage installed on the Premises.
- 12) **Bird Nesting Season.** Construction and maintenance work during nesting season (generally between February 1st and August 31st) will be avoided whenever possible. If construction or maintenance work must be done during the nesting season, a pre-construction survey by a qualified biologist must be undertaken to determine the presence of nesting. If nesting activity is reported, the biologist is expected to recommend the City to implement adequate mitigation measures to protect the nesting area. Environmental impacts will be considered prior to all work by the responsible party, (City or District, and/or their agents) performing said work. Any and all work related to this clause will be completed by the responsible party in accordance with applicable federal, state, and local environmental health and safety regulations including but not limited to the federal Migratory Bird Treaty Act of 1918, Clean Water Act, Endangered Species Act, the California Fish and Wildlife Code and the Porter-Cologne Act and any amendments thereto.
- 13) **Maintenance and Repair.** District is responsible for performing routine maintenance on the Premises for flood protection and water resource management purposes in a manner consistent with its maintenance of comparable facilities or creeks. City is responsible for the maintenance and repair of recreational improvements on the Premises. City will bear the cost and expense of any security, police, preparation of traffic and pedestrian detour plans, including installation of required appurtenances, or other expenditure necessary to temporarily prohibit or control public access to the Premises that District would not ordinarily incur to complete scheduled routine maintenance pursuant to this provision. In an emergency situation or work tied to regulatory compliance (i.e. fish passage or wetlands functionality concerns), District will respond without notice to City. In non-emergency situations, City and District staff will meet, whenever necessary, for the purpose of scheduling routine maintenance, including, but not limited to:
 - a. Maintenance issues related to improvements;

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- b. Method and timing of issues related to affected wildlife;
- c. Non-emergency work requiring the use of heavy equipment, barricading, and/or restricting access to the Premises. District and City further agree to notify one another's designated representative at least ten (10) work days prior to commencement of such work, in order to minimize public impacts.

14) Damage to City's Improvements on Premises. District is not responsible for any damage occurring to City's improvements or structures located on the Premises that results from District's maintenance, construction or reconstruction activities, or from its water management and/or flood protection facilities located on or near the Premises, including (without limitation) any flood flows, or inundation of West Little Llagas Creek onto the Premises. Further, City is responsible for any damage occurring to either District's or City's improvements or structures located on the Premises that result from the public's use of the Premises. All such costs for repairing such damage to District's or City's improvements will be borne by City.

15) Term of Agreement and Renewal Option. This Agreement will become effective upon execution by both parties. However, the City acknowledges that the District Project will be constructed in phases over an estimated five (5) year period where the construction of the District Project will be given priority over proposed City improvements. City agrees to install City improvements on Premises in accordance with Article 19 of this Agreement. The term of this Agreement (including the rights and obligations contained therein) is twenty-five (25) years commencing on the Agreement Effective Date. This City, upon providing District with no less than ninety (90) days written notice, but no more than 180 days notice prior to the expiration of the initial 25-year term, may renew this Agreement for an additional 25-year period.

16) Termination of Agreement. A party may terminate this Agreement without cause after providing the other party with at least 180 days prior written notice of its intent to terminate this Agreement. Upon the termination or expiration of this Agreement, City must remove all City Improvements from the Premises, and leave the Premises in a condition as near as reasonably practical to its condition prior to the installation and/or development of such improvements. If the District requires the trail to be removed from the Premises due to a flood protection project or other District project, this Agreement will terminate upon District providing the City with written notice of at least 180 days. Notice of intent to renew or to terminate may be given by City's Director of Public Works. Notice of intent to terminate may be given by District's Chief Executive Officer.

17) City's Responsibility for Public Use. Subject to the conditions and restrictions contained in this Agreement, City has the full control and authority, for public and recreation purposes over the use of the Premises, and City may restrict, or control, regulate and/or supervise the public use thereof. City may, at its discretion, consistent with the right of District hereinafter described, and without diminution of the flood protection or water resources management function or hazard thereto of the Premises as now existing or as may hereafter be altered,

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take any measures of every kind as may in the opinion of City be necessary for the health and safety of the users of the Premises for any purpose under this Agreement. City has the sole responsibility for the maintenance in usable and safe condition of every facility provided upon the Premises by City.

- 18) District's Superior Rights.** It is expressly understood that District is engaged in flood protection, the protection of water resources, and stream stewardship and that the terms and conditions of this Agreement will not in any way interfere with the absolute, free and unrestricted right of District to operate and maintain for flood protection, water resource management, and stream stewardship purposes the stream bed and banks or any appurtenant works thereto, or to repair or construct any of its works, or to allow the raising or lowering of the height of the water present upon the Premises.
- 19) City's Subordinate Rights.** City will have the right to build improvements on the Premises necessary, or convenient to the enjoyment of this Agreement, provided the location of the any such improvement is, in each case during the term of this Agreement, first approved by District and signified by issuance of a District permit. It is fully understood and agreed that District has the sole, unfettered discretion to approve or disapprove of such improvements.
- 20) Indemnification by City.** Notwithstanding any other provision of this Agreement, City agrees to indemnify, defend and hold harmless District, its agents, officers, directors, and employees from and against any and all demands, claims, damages, losses and reasonable expenses, including but not limited to liabilities, obligations, claims, costs, reasonable expenses (including without limitation interest, penalties and reasonable attorney's fees), fines, levies, assessments, demands, damages or judgments of any kind or nature, whether in law or equity (including without limitation, death or injury to any person, property damage, administrative and judicial orders and consents, or any other loss) to the extent they arise out of, pertain to, or relate to the: (i) public use of the Premises, (ii) public's use of real property adjacent to the Premises, or (iii) negligence or willful misconduct of City's officers, agents, employees, or independent contractors. This Agreement to defend, indemnify, and hold harmless District will operate irrespective of the basis of the claim, liability, loss, damage, or injury and irrespective of whether the act, omission, or activity is a condition of Premises or any other cause of any kind or nature.
- 21) Notices.** Any and all notices required to be given hereunder will be deemed to have been delivered upon deposit in the United States mail, postage prepaid, addressed to either of the parties at the address hereinafter specified or as later amended by either party in writing:

City:

City of Morgan Hill
Attention: Community Services Director
17575 Peak Avenue
Morgan Hill, CA 95037

District:

Santa Clara Valley Water District
Attention: Clerk of the Board
5750 Almaden Expressway
San Jose, CA 95118

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w/copy to District's Community Projects
Review Unit

22) Successors and Assigns. This Agreement, and all terms, covenants, and conditions hereof, will apply to and bind the successors and assigns of the respective parties hereto. City will neither assign nor sublet this Agreement without the prior written consent of District.

23) Choice of Law. This Agreement is governed by California law.

24) Amendments. This Agreement may not be modified or amended except in writing signed by both parties.

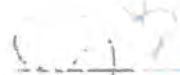
25) Compliance with Laws. Each party must, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents, and employees to comply with all federal, state, and local laws, statutes, orders, ordinances, rules, and regulations.

26) Not Real Property Interest. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, fee or other interest in a party's real property to the other party.

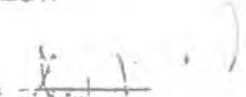
WITNESS THE EXECUTION HEREOF,

"City"

CITY OF MORGAN HILL
A Municipal corporation of the County of Santa Clara

By: 
Christina Turner
City Manager

ATTEST:

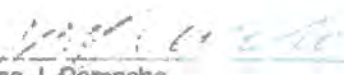

Michelle Wilson
Deputy City Clerk

APPROVED AS TO FORM:

Donald Larkin
City Attorney

"District"

SANTA CLARA VALLEY WATER DISTRICT,
a Special District, created by the California Legislature

By: 
Norma J. Camacho
Chief Executive Officer

ATTEST:


Michele L. King
Clerk of the Board of Directors

APPROVED AS TO FORM:

Brian Hopper
Senior Assistant District Counsel

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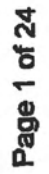


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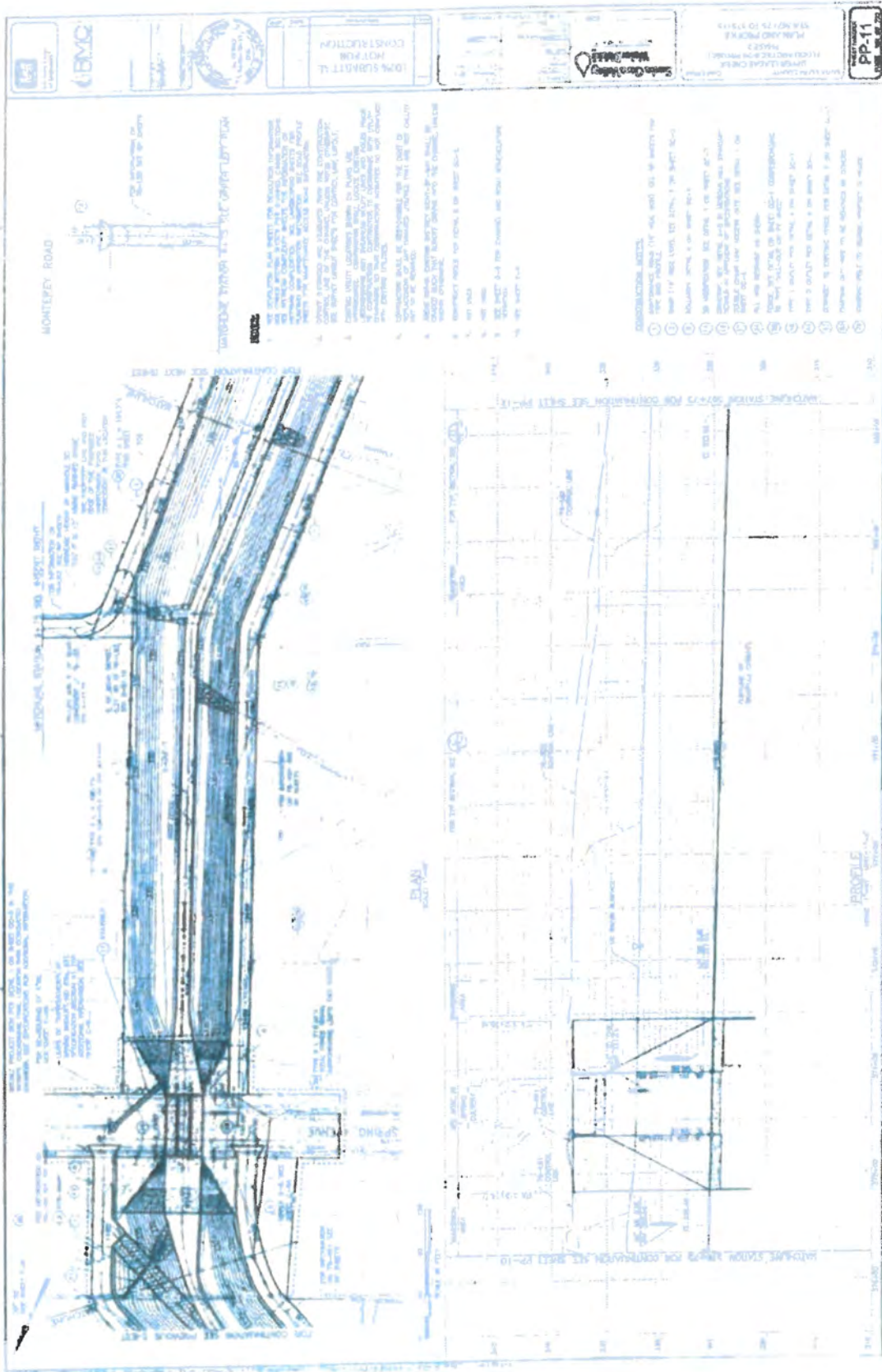


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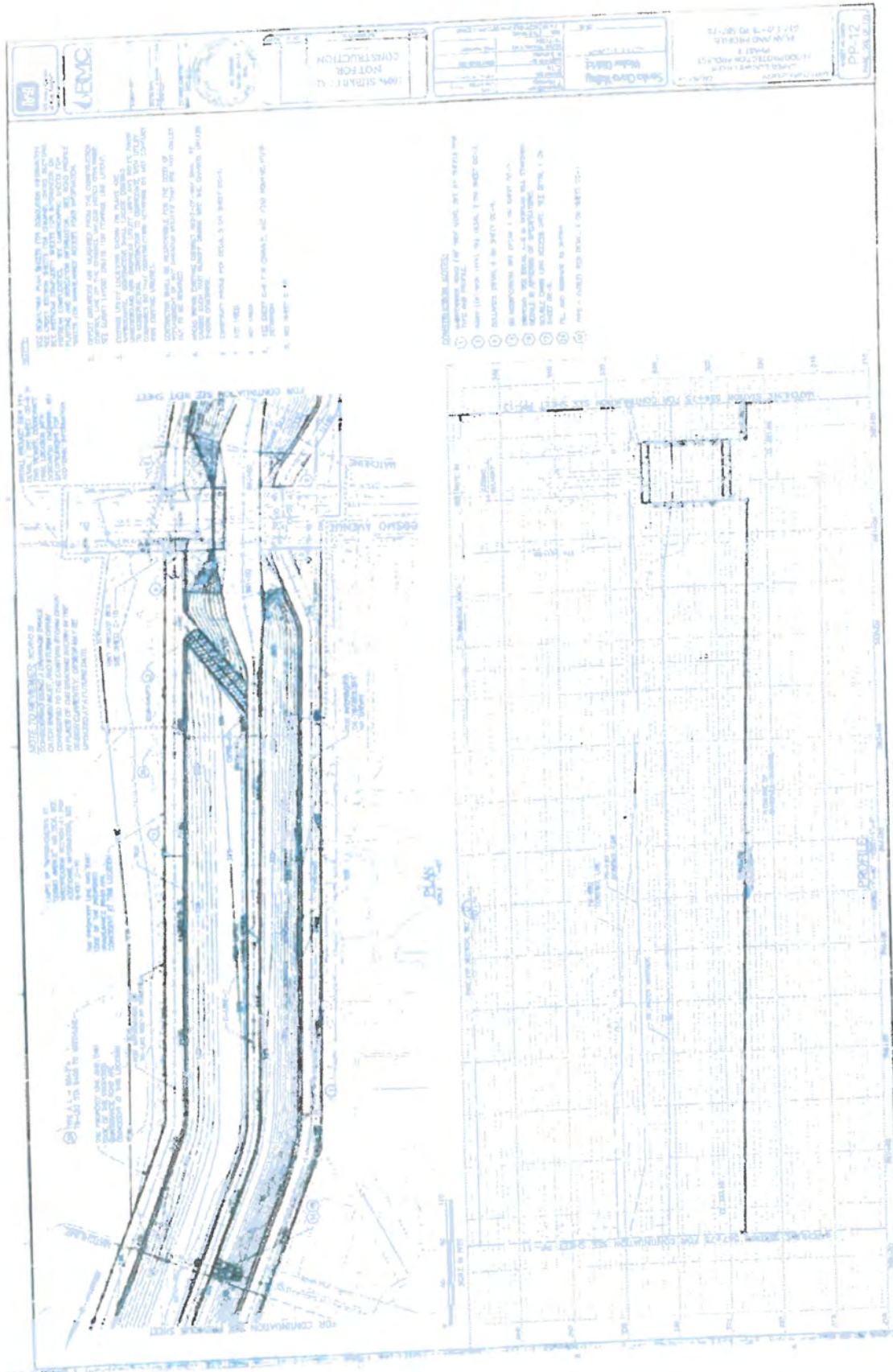


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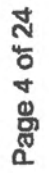


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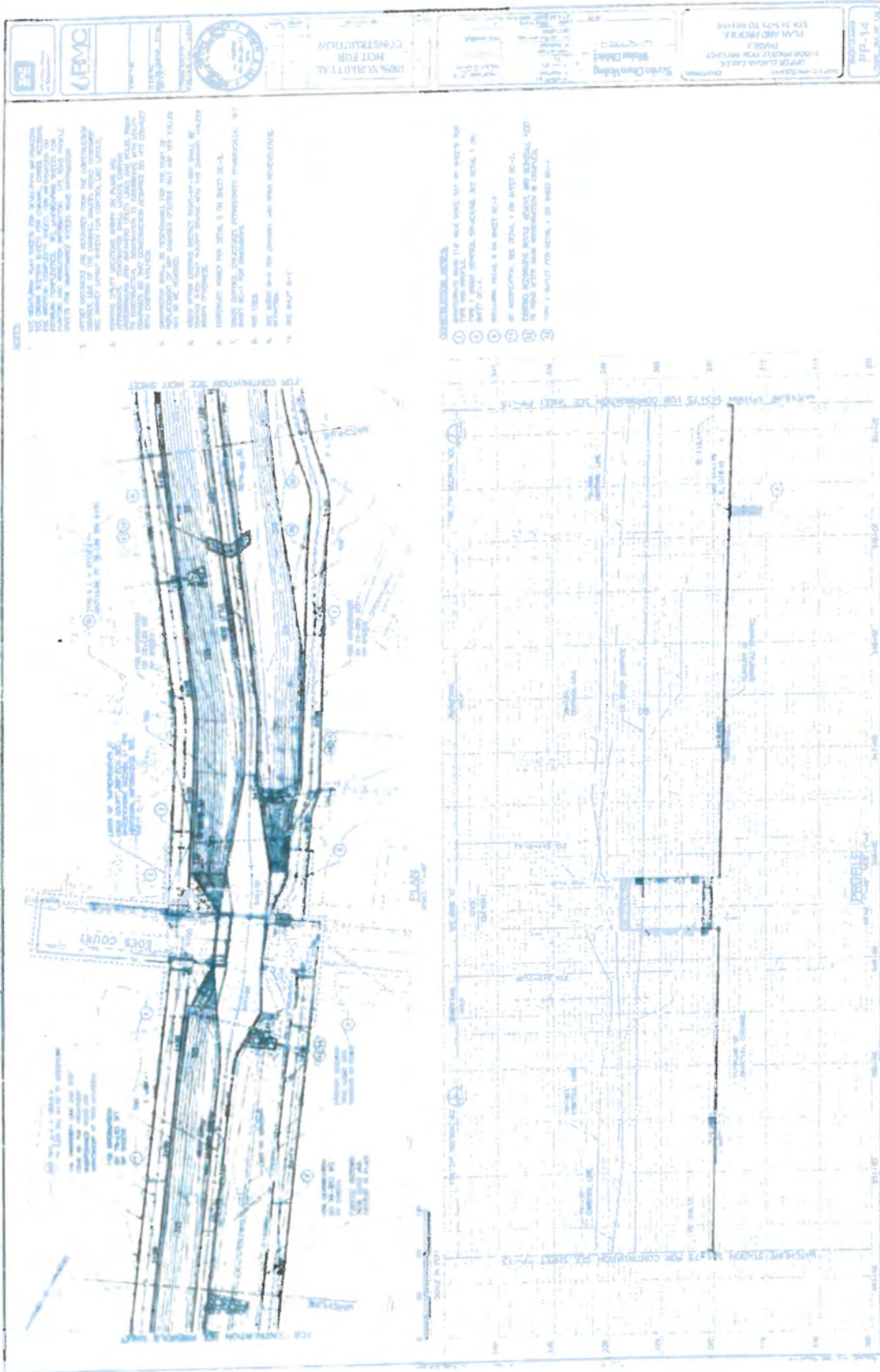


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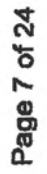


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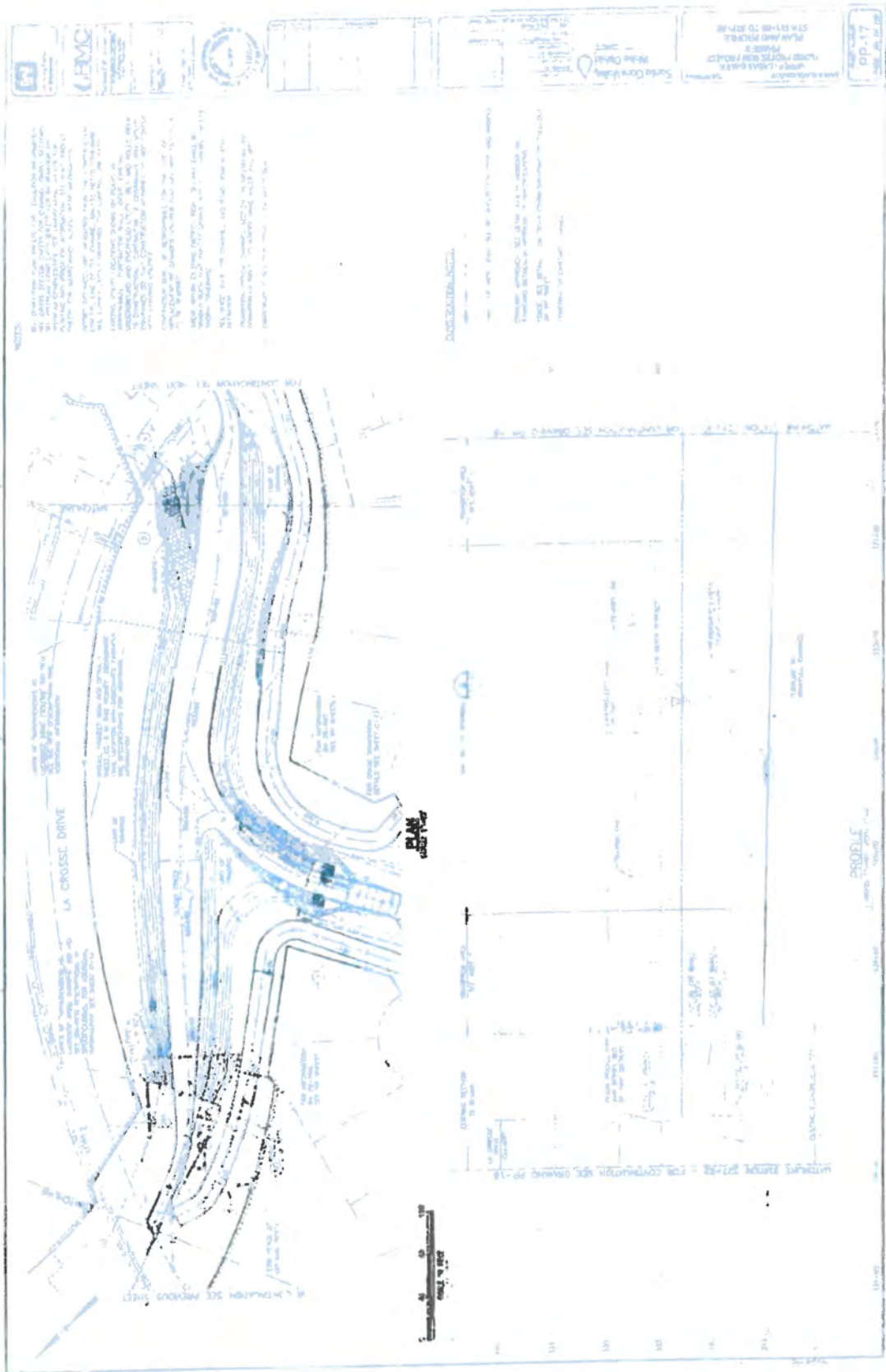


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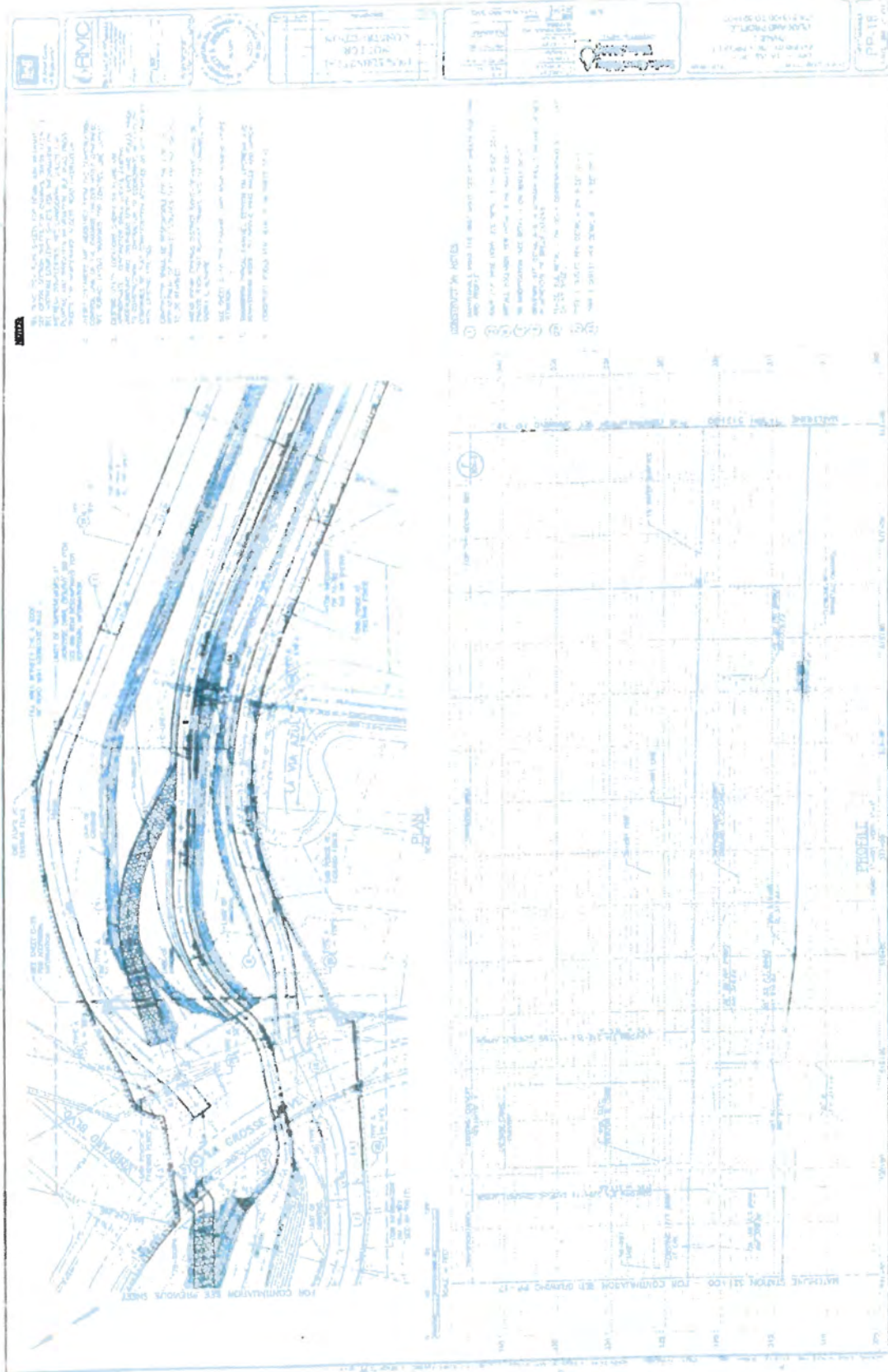
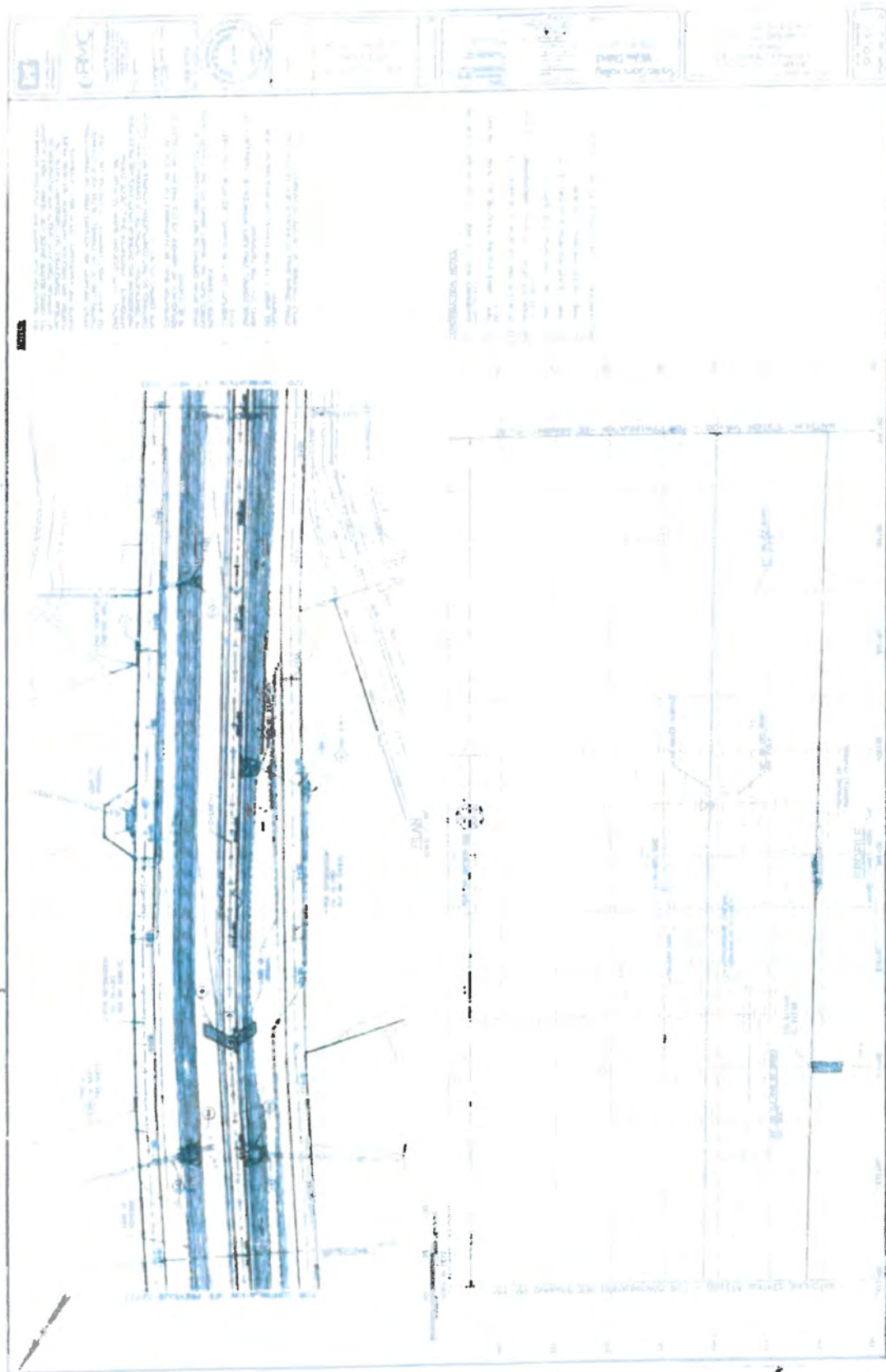


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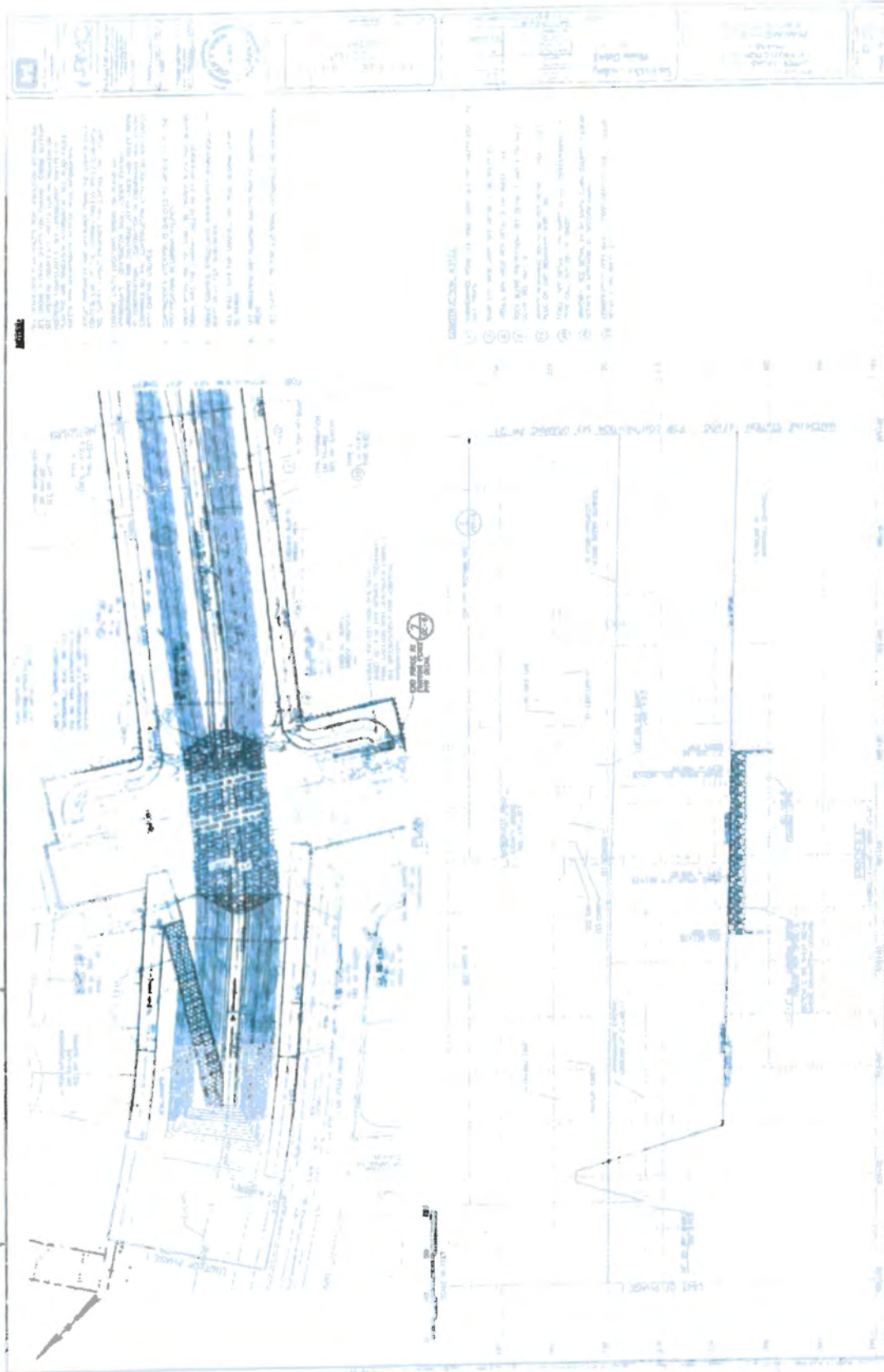


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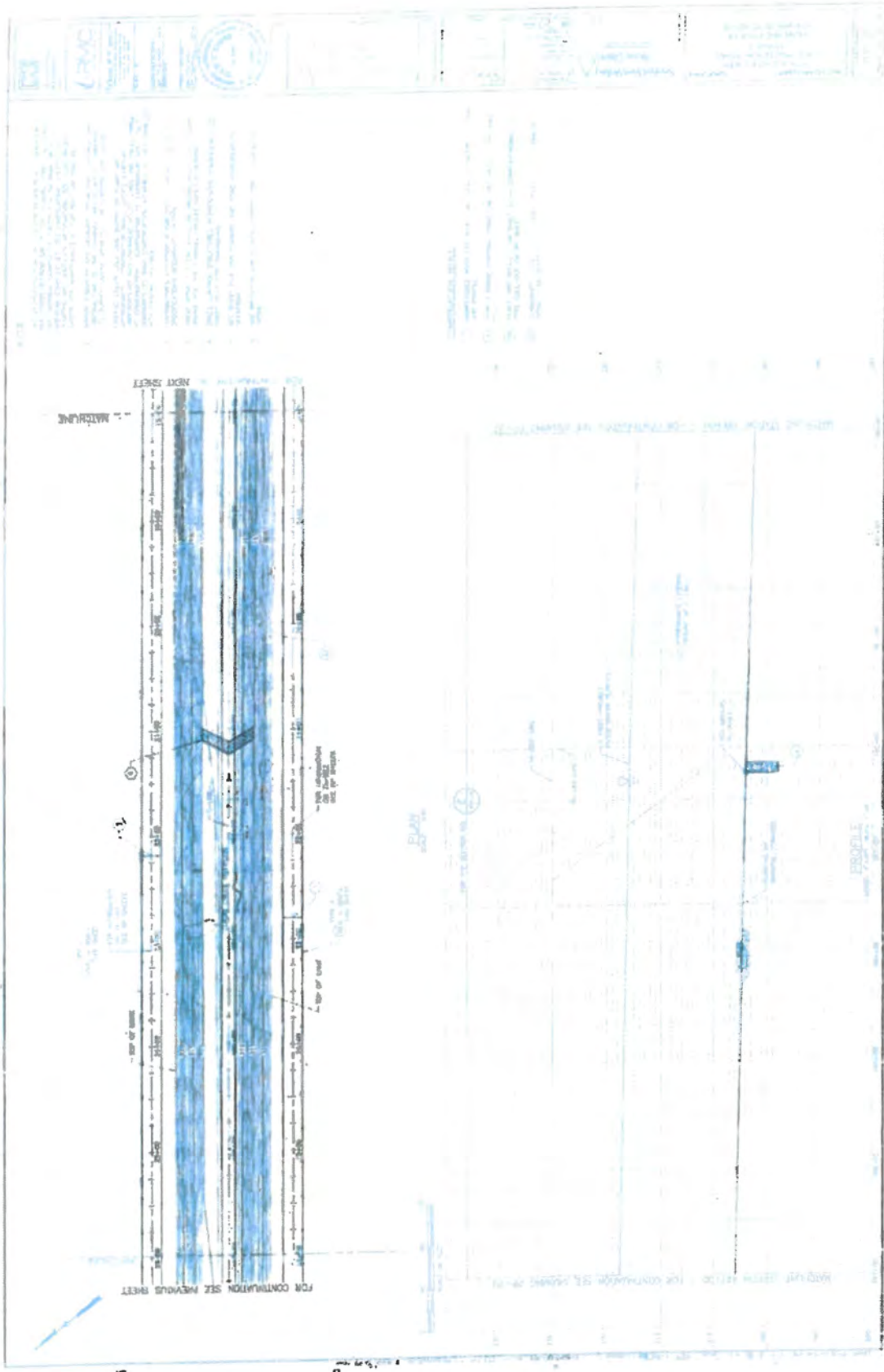


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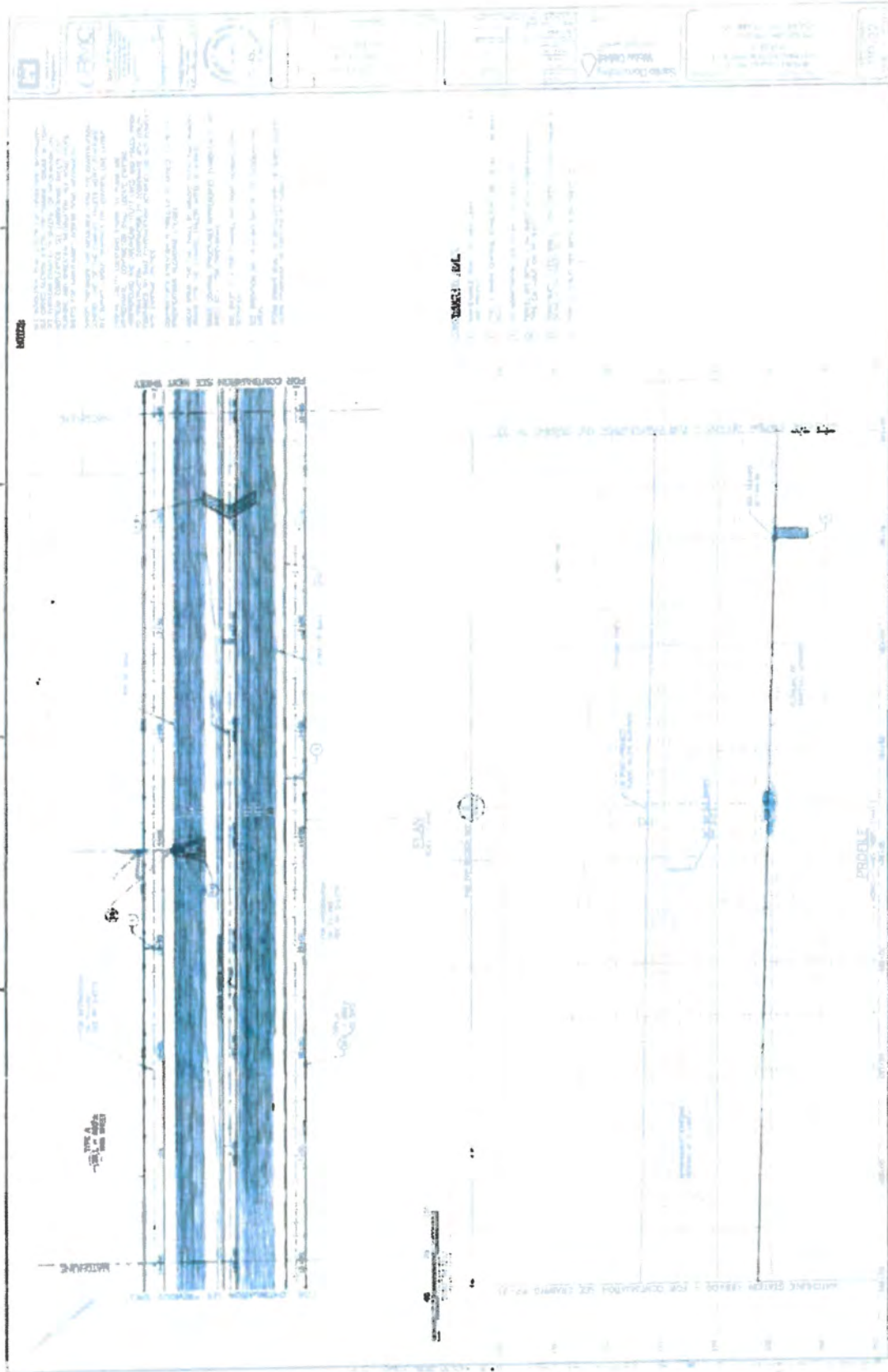


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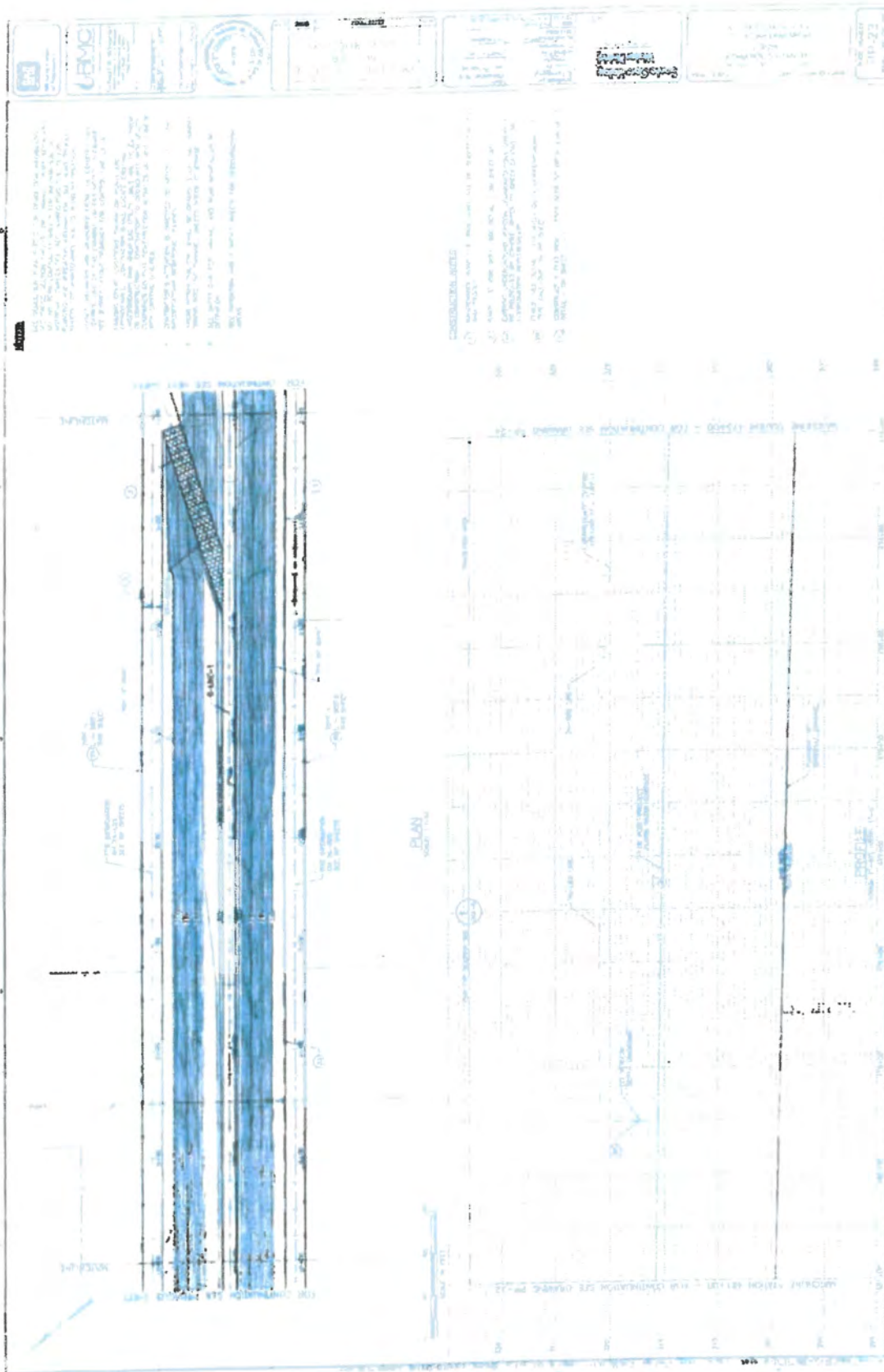


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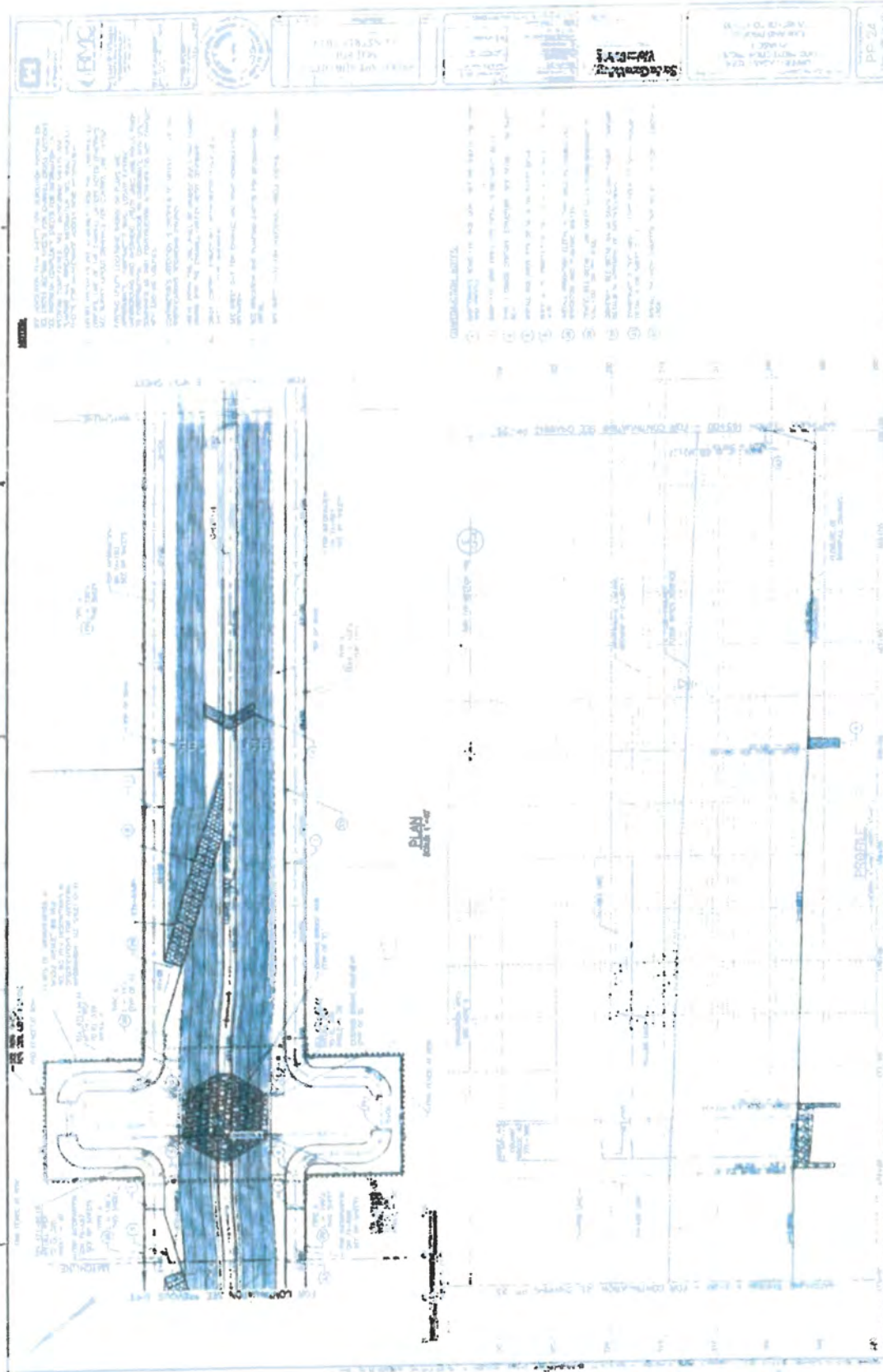


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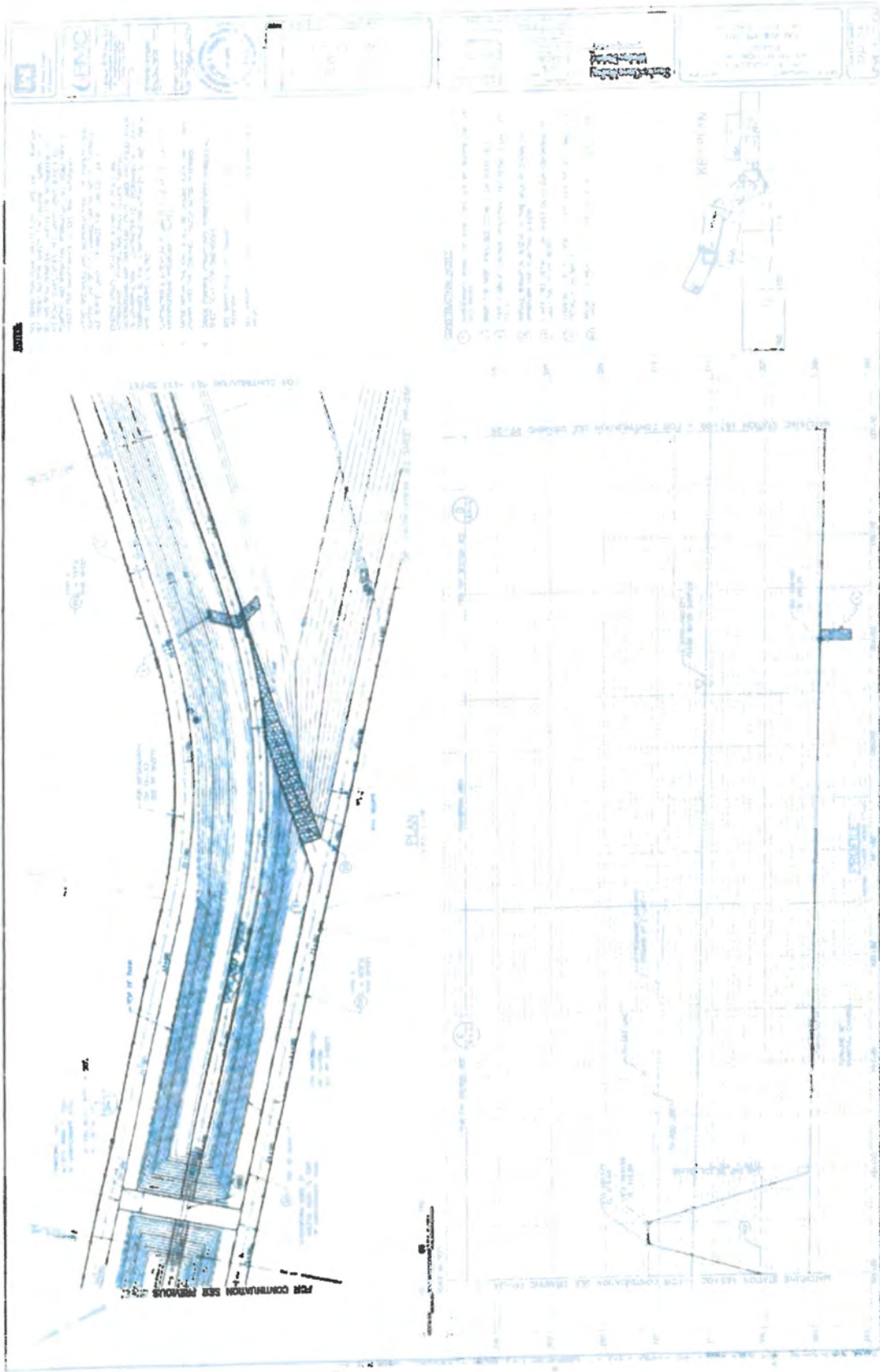
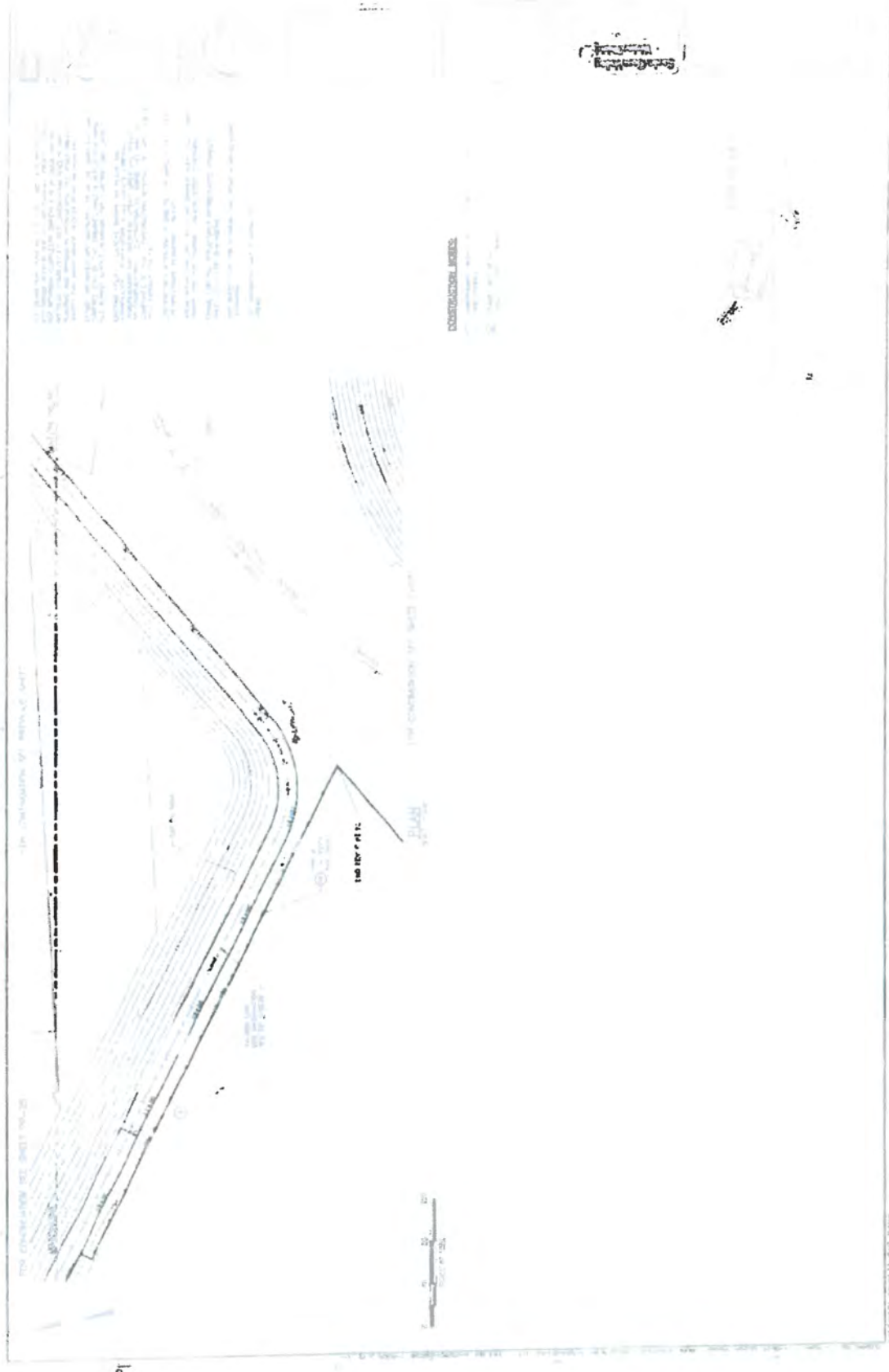


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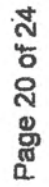


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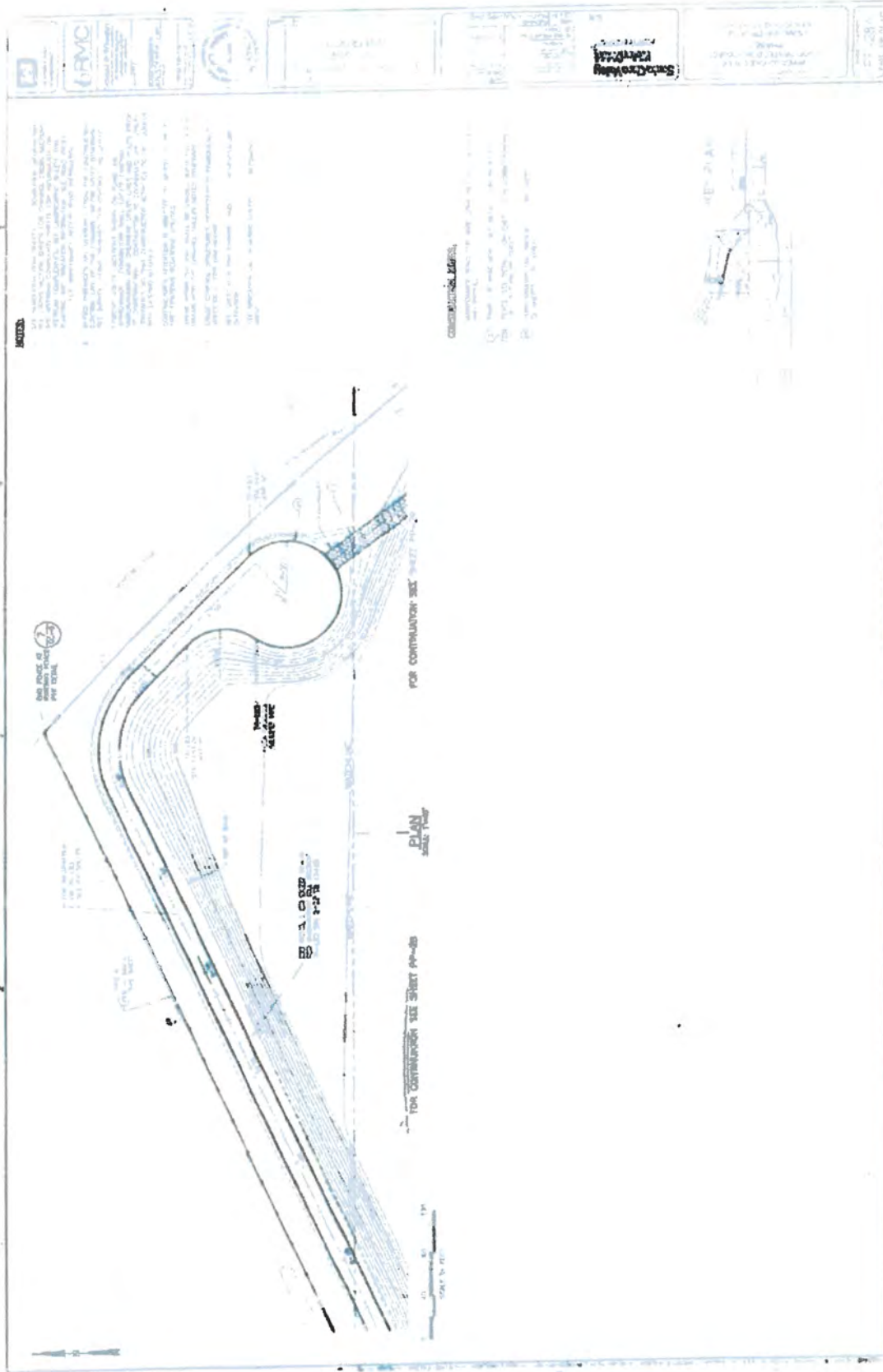


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