



**Ontario Energy Board
Commission de l'énergie de l'Ontario**

DECISION AND ORDER

EB-2013-0442

wpd Sumac Ridge Wind Incorporated

Establishing a location for the applicant's distribution facilities on public road allowances owned by the Corporation of the Municipality of Kawartha Lakes

**Before: Ken Quesnelle
Presiding Member and Vice Chair**

**Ellen Fry
Member**

July 16, 2015

INTRODUCTION AND SUMMARY

wpd Sumac Ridge Wind Incorporated (Sumac) applied to the Ontario Energy Board (OEB) for approval to locate distribution facilities on road allowances owned by the Municipality of Kawartha Lakes (Kawartha Lakes). The OEB approves the application as described in this Decision and Order.

Sumac is a wind generation developer that intends to build, own and operate a wind generation facility in Kawartha Lakes that will produce 10.25 MW of renewable energy. Sumac will deliver the renewable energy generated from this project to the provincial electricity grid pursuant to a Feed-in-Tariff contract with the former Ontario Power Authority.

Sumac is proposing to construct a 44 kV underground distribution line, approximately 20 metres long, beneath Wild Turkey Road. In order to convey the electricity generated by the project to the Independent Electricity System Operator (IESO) controlled grid, Sumac is also proposing to construct a 44 kV three phase aboveground distribution line, approximately 1,750 metres long (together, the Distribution Facilities). The above ground distribution line will be along a portion of Gray Road which will connect to an existing local distribution system located along Highway 35, and run to Hydro One Network Inc.'s Wilson Transmission Station, which is in turn connected to the IESO controlled grid.

The affected sections of Wild Turkey Road and Gray Road are referred to in this Decision and Order as the Road Allowances.

Sumac filed its application with the OEB, under subsection 41(9) of the Act for an order or orders establishing a location for the Distribution Facilities within the Road Allowances. Subsection 41(9) provides as follows:

The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board.

Sumac is a “distributor” within the meaning of subsection 2(1) of the Act and hence as contemplated by subsection 41(9).

THE PROCESS

Sumac filed its application with the OEB on December 20, 2013. Dr. Salmon requested and was granted intervenor status. She participated by filing written interrogatories, submissions, evidence, and responding to interrogatories on her filed evidence. The OEB decided to proceed by way of a written hearing.

Sumac asked the OEB for, and was granted, additional time to prepare and submit drawings showing the location of the Distribution Facilities. On December 5, 2014, Sumac submitted these drawings.

The OEB asked for written submissions on two questions: 1) whether the “unopened” or “unassumed” road allowances covered by the application are “public street[s] or highway[s]” as contemplated by section 41 of the Act and 2) what portion of the road allowances covered by the application are “unopened” or “unassumed”. The OEB also accepted Kawartha Lakes as an intervenor for the purpose of making these submissions, even though Kawartha Lakes did not request intervenor status in this proceeding.

As part of its response to the request for submissions on unopened road allowances, Kawartha Lakes filed two affidavits that had been filed in a proceeding in the Ontario Divisional Court. Sumac argued that these affidavits should be disregarded because they had not been tested in this proceeding, and filed a responding affidavit to cover the eventuality that the OEB did not accept this argument.

The OEB considers that these affidavits filed by both sides have little or no relevance to the issue regarding unopened road allowances. In addition, these affidavits were filed after the point in this proceeding when evidence was permitted to be filed and there has been no opportunity for opposing parties to test their contents. The OEB will therefore give no weight to these affidavits.

PRELIMINARY ISSUE CONCERNING UNOPENED OR UNASSUMED ROAD ALLOWANCES

Introduction

The OEB’s authority in this proceeding is derived from section 41 of the Act.

Section 41(1) of the Act states:

A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines.

Kawartha Lakes stated that Gray Road is a local road that is unopened and is not maintained; however it stated that it will accommodate placement of distribution infrastructure within Gray Road.

Dr. Salmon submitted that section 41 of the Act applies to opened public streets and highways, not a historic unopened, unassumed and unmaintained road allowance such as Gray Road.

Sumac submitted that unopened and unassumed road allowances are public highways and that contrary to the position taken by Dr. Salmon, the terms “opened” and “assumed” merely refer to a municipality’s obligation to clear and maintain the road allowance. OEB staff supported the submission of Sumac and submitted that the unopened and unassumed road allowances of Gray Road and Wild Turkey Road are properly considered as public highways for the purpose of section 41(9) of the Act.

Findings

There is no definition of “public highway” specifically for purposes of section 41 of the Act.

Sumac and OEB staff argued that the OEB should adopt the definition of “highway” in section 26(4) of the *Municipal Act, 2001*¹ (the Municipal Act). This definition is as follows: “All road allowances made by the Crown surveyors that are located in municipalities.”

This definition would lead to the conclusion that an unopened or unassumed road allowance is a public highway for purposes of section 41 of the Act because it has been made by a Crown surveyor. Such a survey would have been required to create the legal description for the land covered by the road allowance.

Dr. Salmon argued that rather than adopting this definition the OEB should adopt the definition of “highway” in the *Highway Traffic Act, 1990*² (the Highway Traffic Act). This definition would lead to the conclusion that an unopened or unassumed road allowance

¹ *Municipal Act, 2001*, S.O. 2001, Chapter 25

² *Highway Traffic Act*, R.S.O. 1990, Chapter H.8.

is not a public highway for purposes of section 41 because the public is not ordinarily entitled or permitted to use [it] for the passage of vehicles³.

The OEB agrees with Sumac and OEB staff that it is appropriate to apply the more general definition of highway that is found in the Municipal Act. The definition in the Highway Traffic Act was designed for the more specific purpose of regulating vehicle traffic on public roads, which necessarily requires that the roads involved be opened to traffic. The purpose of section 41 does not require this kind of restriction.

Therefore the OEB concludes that an unopened or unassumed road allowance is a public highway for purposes of section 41.

LOCATION IN THE ROAD ALLOWANCES

Proposed Alternative Location

Introduction

Sumac has provided engineering drawings, additional information and maps showing the location of the proposed Distribution Facilities within the Road Allowances.

Dr. Salmon proposed an alternate location for the Distribution Facilities that would avoid locating the Distribution Facilities in the Gray Road road allowance and instead locate the Distribution Facilities in the Highway 7A and Highway 35 road allowances. Sumac argued that to approve this proposal would be outside the OEB's mandate in considering this application, because section 41(9) relates only to the location of lines within a given road allowance, and does not cover the possibility of ordering the distribution line to be located in a different road allowance. OEB staff did not take a position on this issue.

Findings

Based on its reading of the wording of section 41(9), the OEB agrees with Sumac that section 41(9) does not permit the OEB to decide in this proceeding that the line be located in a different road allowance.

³ Highway Traffic Act, R.S.O. 1990, Chapter H.8, Section 1, Interpretation, general, Definitions.

Section 41(7)**Introduction**

Kawartha Lakes argued that the OEB should consider section 41(7) in this proceeding. Section 41(7) provides as follows:

- (7) If a transmitter or distributor exercises a power of entry under this section, it shall,
- a) provide reasonable notice of entry to the owner or other person having authority over the street or highway;
 - b) in so far as is practicable, restore the street or highway to its original condition; and
 - c) provide compensation for damages caused by the entry.

Sumac and OEB staff did not take a position on this issue.

Findings

The OEB does not agree with Kawartha Lakes on this issue. Given the evidence that the Road Allowances are in a natural, treed state, there is certainly the possibility that section 41(7) could come into play at some point. However, the OEB's mandate in this proceeding under section 41(9), as set out in the Act, does not encompass a consideration of section 41(7) in this proceeding.

Location of Road Allowances**Introduction**

Kawartha Lakes and Dr. Salmon have raised the issue that the location of the Road Allowance in the applicable part of Wild Turkey Road may be unclear. Sumac submits that this is incorrect. OEB staff has not taken a position on this issue.

Findings

The OEB's jurisdiction in this proceeding is limited to determining where in the applicable road allowances the Distribution Facilities should be located. It is for the parties to determine where the road allowances are located, in accordance with applicable real estate law. Should any part of the proposed location of the Distribution Facilities turn out to be in a place outside the road allowances, the OEB would not have jurisdiction to order that the relevant portion of the Distribution Facilities be located there.

Location Within the Road Allowances

Sumac has proposed where its line should be located within the Gray Road and Wild Turkey Road Allowances. Neither Kawartha Lakes, Dr. Salmon nor OEB staff has proposed an alternate location within those road allowances. Accordingly, the OEB approves the location proposed by Sumac, to the extent that this location is within the road allowances.

OTHER ISSUES

Costs for Affidavits

Sumac has requested that the OEB order Kawartha Lakes to pay the costs related to the filing of its Divisional Court affidavits referred to above, because in Sumac's view these affidavits give incomplete and misleading information. Since, as indicated above, the Kawartha Lakes affidavits and Sumac's responding affidavit have not been tested in this proceeding, the OEB does not have sufficient information to assess the correctness of Sumac's allegation and to what extent, if any, Sumac merits the costs it has requested. The information available suggests that the filing of the affidavits by both parties is simply part of the normal give and take of litigation and does not merit any special costs treatment.

Sumac Corporate Name

In its application and subsequent filings in this proceeding, Sumac indicated that its corporate name was "wpd Sumac Ridge Incorporated". However, on June 4, 2015, Sumac indicated that this was done in error and that its correct legal name is wpd Sumac Ridge Wind Incorporated. Accordingly, the OEB will issue its order in the name of wpd Sumac Ridge Wind Incorporated.

THE OEB ORDERS THAT:

1. The location of Sumac's Distribution Facilities in the Road Allowances, to the extent that they are road allowances owned by Kawartha Lakes, is approved as follows:
 - a. The Distribution Facilities shall be located in the Road Allowances as shown in the engineering drawings in Appendix A

2. This approval includes any subsequent refinements regarding the location of the Distribution Facilities within the Road Allowances which are agreed to by Sumac and Kawartha Lakes.
3. Dr. Salmon shall submit her cost claim no later than 7 days from the date of this decision.
4. Sumac shall file with the OEB and forward to Dr. Salmon any objections to the claimed costs within 14 days from the date of this decision.
5. Dr. Salmon shall file with the OEB and forward to Sumac any response to any objection for cost claims within 21 days from the date of this decision.
6. Sumac shall pay the OEB's costs incidental to this proceeding upon receipt of the OEB's invoice.

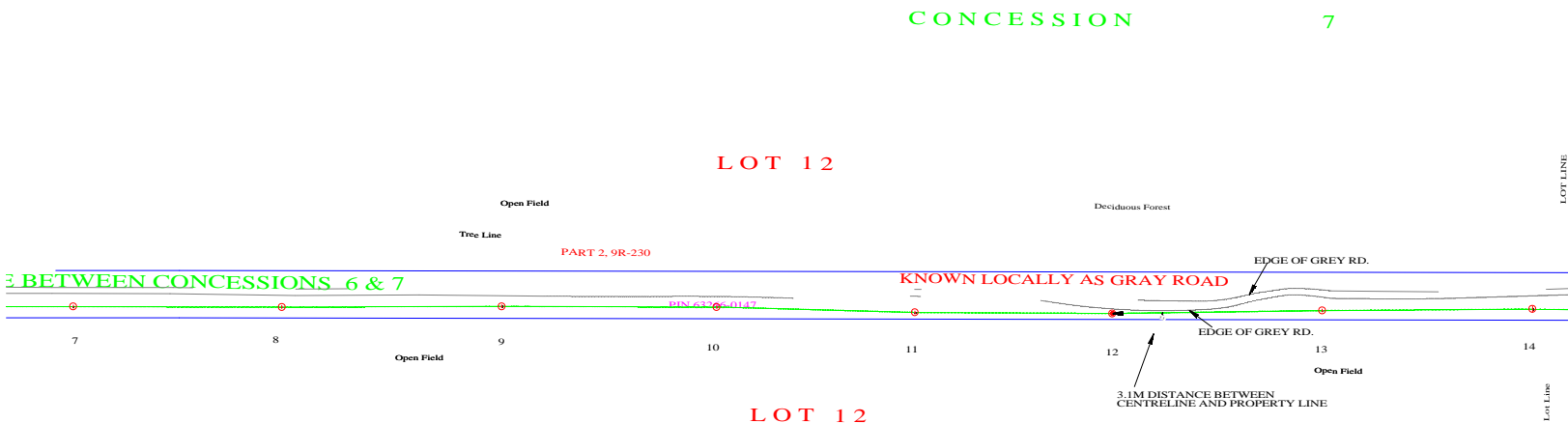
ISSUED at Toronto, July 16, 2015

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Schedule A
wpd Sumac Ridge Wind Inc.
Decision and Order
July 16, 2015

[illegible]

LEGEND:

- COLLECTOR LINE
- 44KV DISTRIBUTION COLLECTION LINE
- MINISTRY OF TRANSPORTATION ONTARIO
PROPOSED ROAD CENTRE
- GREY ROAD 4 RIGHT-OF-WAY BOUNDARY
- UNDERGROUND CABLE
- BOUNDARY OF SUBSTATION

| | | | | | | | |
|----|------------|-------------------|-----------|---------|--------|------------|--|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| A | 2015-01-19 | DURIED FOR REVIEW | SAm | RE | SAm | RE | |
| NO | DxIN | CANCROPTON | P607-4850 | R01-039 | D0002N | ACTION0020 | |

| | | |
|--|---------------|-------------|
| REVISIONS/ISSUE | DRAFTING | ENGINEERING |
| SCALE | PROJECT STAMP | |
| <div style="border: 2px solid magenta; padding: 10px; text-align: center;"> <p>PRELIMINARY DRAWING</p> <p>NOT TO BE USED FOR CONSTRUCTION</p> </div> | | |

| | | |
|--------------------------------------|---------------------------------|-------------------------------------|
| DESIGNED BY: S. AMJAD | PREPARED BY: S. AMJAD | REVIEWED BY: R. EFTEKHARI |
| AUTHORIZED BY: R.EFTEKHARI | DATE: 2014.11.13 | SCALE: AS NOTED |

THE CONTENT OF THIS DOCUMENT IS NOT INTENDED FOR THE USE OF, NOR IS IT INTENDED TO BE RELIED UPON BY ANY PERSON, FIRM OR CORPORATION OTHER THAN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech). TETRA TECH WEI INC. (Tetra Tech) DENIES ANY LIABILITY WHATSOEVER TO OTHER PARTIES FOR DAMAGES OR INJURY SUFFERED BY SUCH THIRD PARTY ARISING FROM THE USE OF THIS DOCUMENT BY THEM, WITHOUT THE EXPRESSLY WRITTEN ALTERATION AND AUTHORIZATION OF TETRA TECH WEI INC. (Tetra Tech). THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTIONS IMPOSED BY THE CONTRACT BETWEEN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech) AND THESE PARTIES' PERMISSION MUST BE SOUGHT REGARDING THIS DOCUMENT IN ALL OTHER CIRCUMSTANCES.

REGARDING THIS DOCUMENT IN ALL OTHER CIRCUMSTANCES.

RE CONSULTANTS:

CLIENT: WPD CANADA

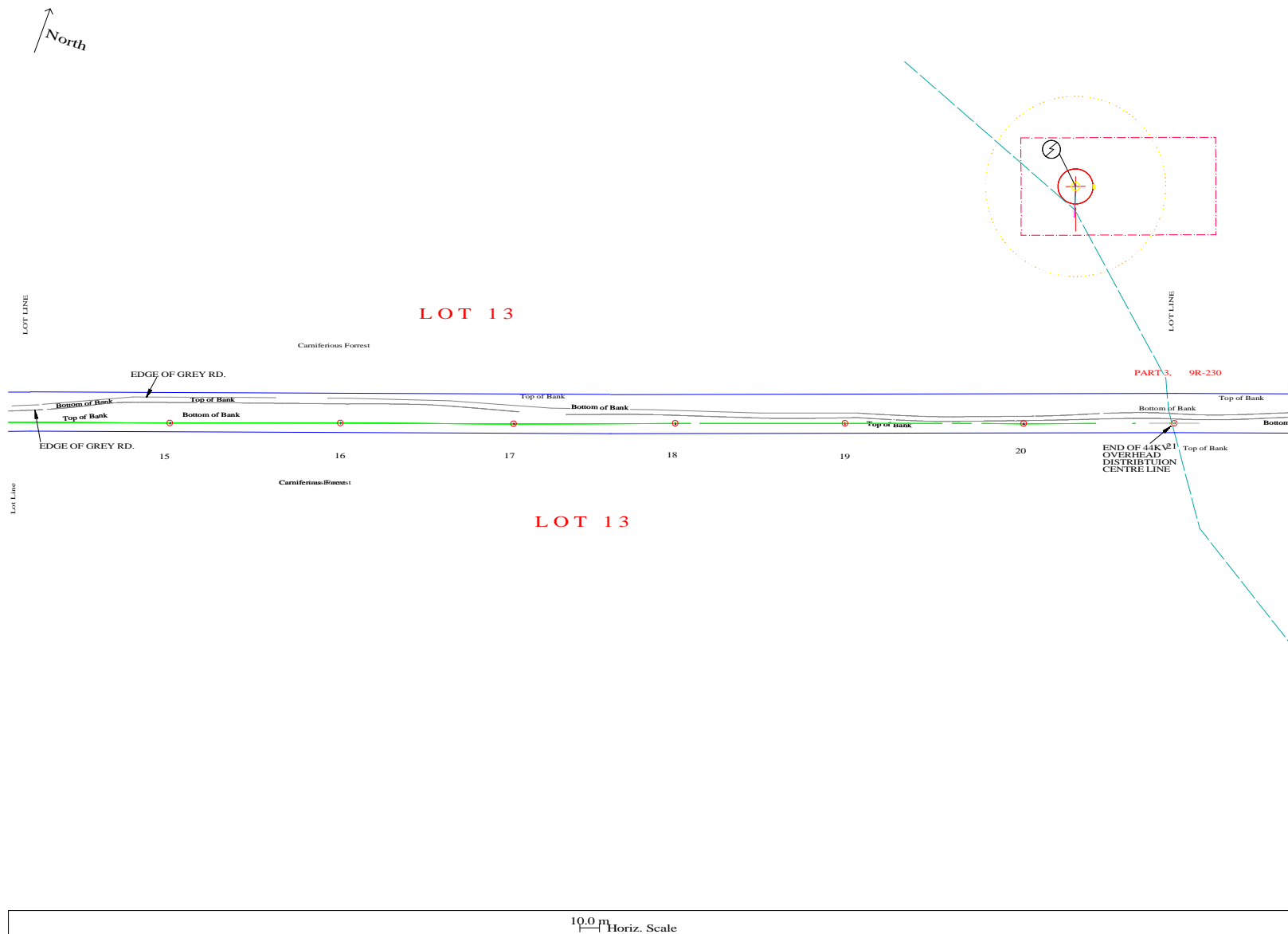


PROJECT NAME: SUMAC WIND RIDGE PROJECT

PLAN VIEW OF
44 kV COLLECTOR
DISTRIBUTION LINE (SHEET 2 OF 3)

| | |
|-------------------------------------|-----------|
| DRAWING NO: 1596930100-DWG-E0004 | REV: A |
|-------------------------------------|-----------|

3D MODEL REF No:



PLS-CADD Drawing

[illegible]

LEGEND:

- COLLECTOR LINE
 --- 44KV DISTRIBUTION COLLECTION LINE
 --- MINISTRY OF TRANSPORTATION ONTARIO
 PROPOSED ROAD CENTRE
 --- GREY ROAD 4 RIGHT-OF-WAY BOUNDARY
 --- UNDERGROUND CABLE
 --- BOUNDARY OF SUBSTATION

| | | | | | | | |
|-----|------------|-------------------|--|-----------|---------|----------|--------------|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| A | 2015.01.19 | ISSUED FOR REVIEW | | S.Asn | RF | S.Asn | RF |
| No. | Date | DESCRIPTION | | PRI#-A003 | REVISEN | DISSECTN | ACTIVE/INACT |

| | | |
|------------------|---------|-------------|
| REVISIONS/ISSUE: | DRAWING | ENGINEERING |
|------------------|---------|-------------|

PERMIT SEAMS

PRELIMINARY
DRAWING

NOT TO BE
USED FOR
CONSTRUCTION

| | | |
|--------------------------------|--------------------------|------------------------------|
| DESIGNED BY: S. AMJAD | PREPARED BY: S. AMJAD | REVIEWED BY: R. EFTEKHARI |
| AUTHORIZED BY: R. EFTEKHARI | DATE: 2014.11.13 | SCALE: AS NOTED |

THE CONTENT OF THIS DOCUMENT IS NOT INTENDED FOR THE USE OF, NOR IS IT INTENDED TO BE RELIED UPON BY ANY PERSON, FIRM OR CORPORATION OTHER THAN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech). TETRA TECH WEI INC. (Tetra Tech) DENIES ANY LIABILITY WHATSOEVER TO ANY PERSON, FIRM OR CORPORATION FOR ANY LOSS OR DAMAGE OF ANY KIND ARISING FROM THE USE OF THIS DOCUMENT BY THEM, WITHOUT THE EXPRESSED WRITTEN AUTHORITY OF TETRA TECH WEI INC. (Tetra Tech) AND OUR CLIENT. THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTIONS IMPOSED BY THE CONTRACT BETWEEN THE CLIENT AND TETRA TECH WEI INC. (Tetra Tech) AND THESE PARTIES HEREBY WAIVE AND AGREE TO FORFEIT ANY RIGHTS TO SUCH FURTHER RESTRICTIONS.

SUB-CONSULTANTS/

CLIENT:

WPD CANADA



PROJECT NAME

SUMAC WIND RIDGE PROJECT

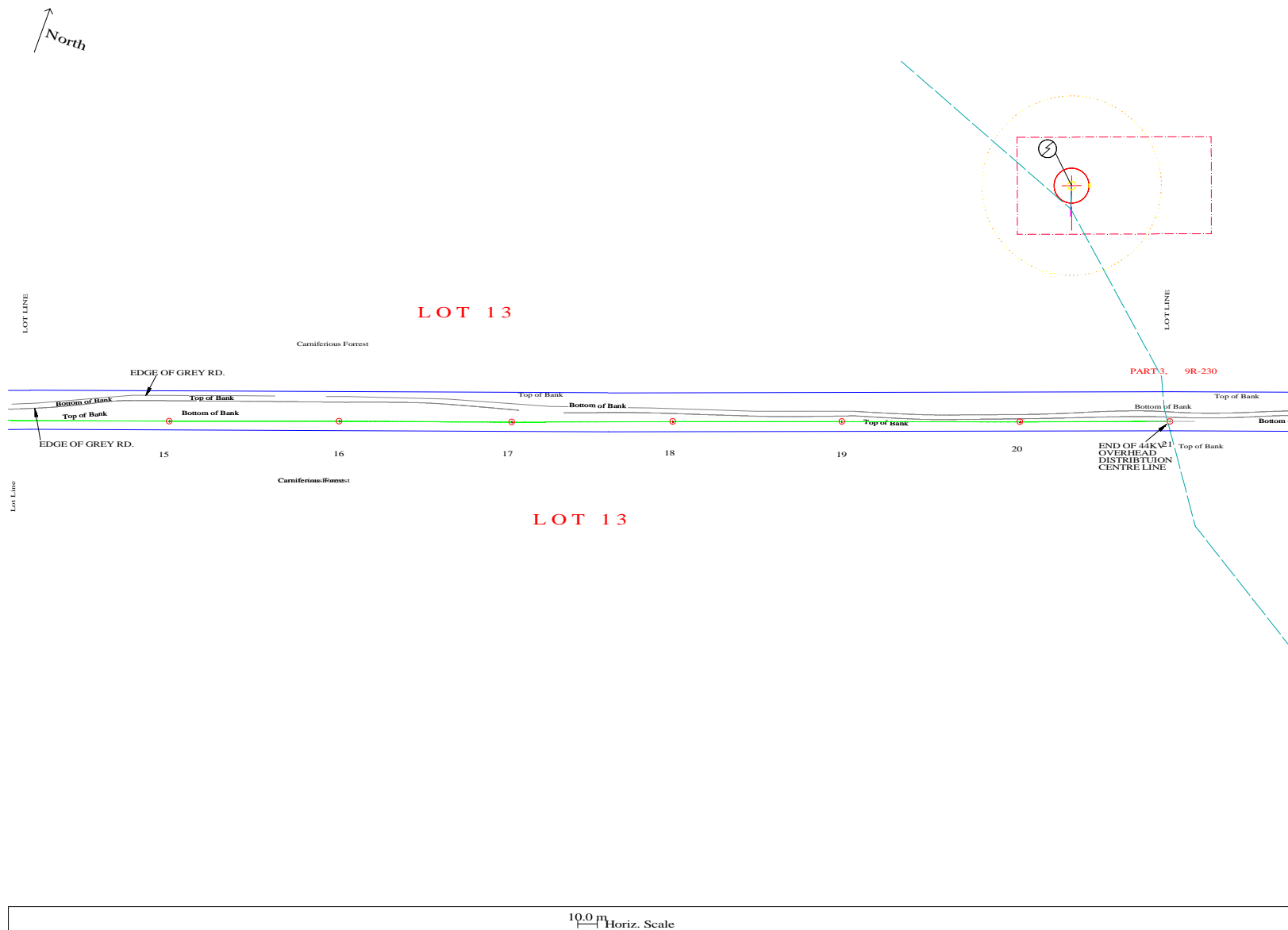
DRAWING DESCRIPTION

PLAN VIEW OF
44 kV COLLECTOR
DISTRIBUTION LINE (SHEET 2 OF 3)

DRAWING NO:
1596930100-DWG-E0004

1

TO MAKE THEM



PLS-CADD Drawing

[illegible]

LEGEND:

- COLLECTOR LINE
 --- 44KV DISTRIBUTION COLLECTION LINE
 --- MINISTRY OF TRANSPORTATION ONTARIO
 PROPOSED ROAD CENTRE
 --- GREY ROAD 4 RIGHT-OF-WAY BOUNDARY
 --- UNDERGROUND CABLE
 --- BOUNDARY OF SUBSTATION

| | | | | | | | |
|-----|------------|-------------------|----------|---------|-------|------------|--|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| A | 2015-01-19 | ISSUED FOR REVIEW | SAm | RE | SAm | RE | |
| No. | Date: | Description | PREPARED | REVISED | DRAWN | AUTHORIZED | |

| | | | |
|--|--------------|------|----------|
| REV | DESCRIPTION | DATE | ENGINEER |
| SCALE | PROJECT NAME | | |
| <div style="border: 2px solid black; padding: 10px; text-align: center;"> <h1>PRELIMINARY DRAWING</h1> <p>NOT TO BE USED FOR CONSTRUCTION</p> </div> | | | |

| | | |
|--------------------------------------|---------------------------------|-------------------------------------|
| DESIGNED BY: S. AMJAD | PREPARED BY: S. AMJAD | REVIEWED BY: R. EFTEKHARI |
| AUTHORIZED BY: R.EFTEKHARI | DATE: 2014.11.13 | SCALE: AS NOTED |

THE CONTENT OF THIS DOCUMENT IS NOT INTENDED FOR THE USE OF, NOR IS IT INTENDED TO BE RELIED UPON BY ANY PERSON, FIRM OR CORPORATION OTHER THAN THE CLIENT AND TETRA TECH WEL INC. (Tetra Tech and Tetra Tech Inc.) or Tetra Tech and Tetra Tech Inc.'s liability WHATSOEVER TO OTHERS FOR DAMAGES OR INJURY SUFFERED BY SUCH THIRD PARTY ARISING FROM THE USE OF THIS DOCUMENT BY THEM, WITHOUT THE EXPRESSED WRITTEN AUTHORITY OF TETRA TECH WEL INC. (Tetra Tech and OUR CLIENT. THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTIONS IMPOSED BY THE CONTRACT BETWEEN THE CLIENT AND TETRA TECH WEL INC. (Tetra Tech) AND THESE PARTIES HEREBY AGREE TO BE SOUGHT BY NEITHER PARTY.

SUB-CONSULTANTS/

CLIENT:

WPD CANADA



PROJECT NAME

SUMAC WIND RIDGE PROJECT

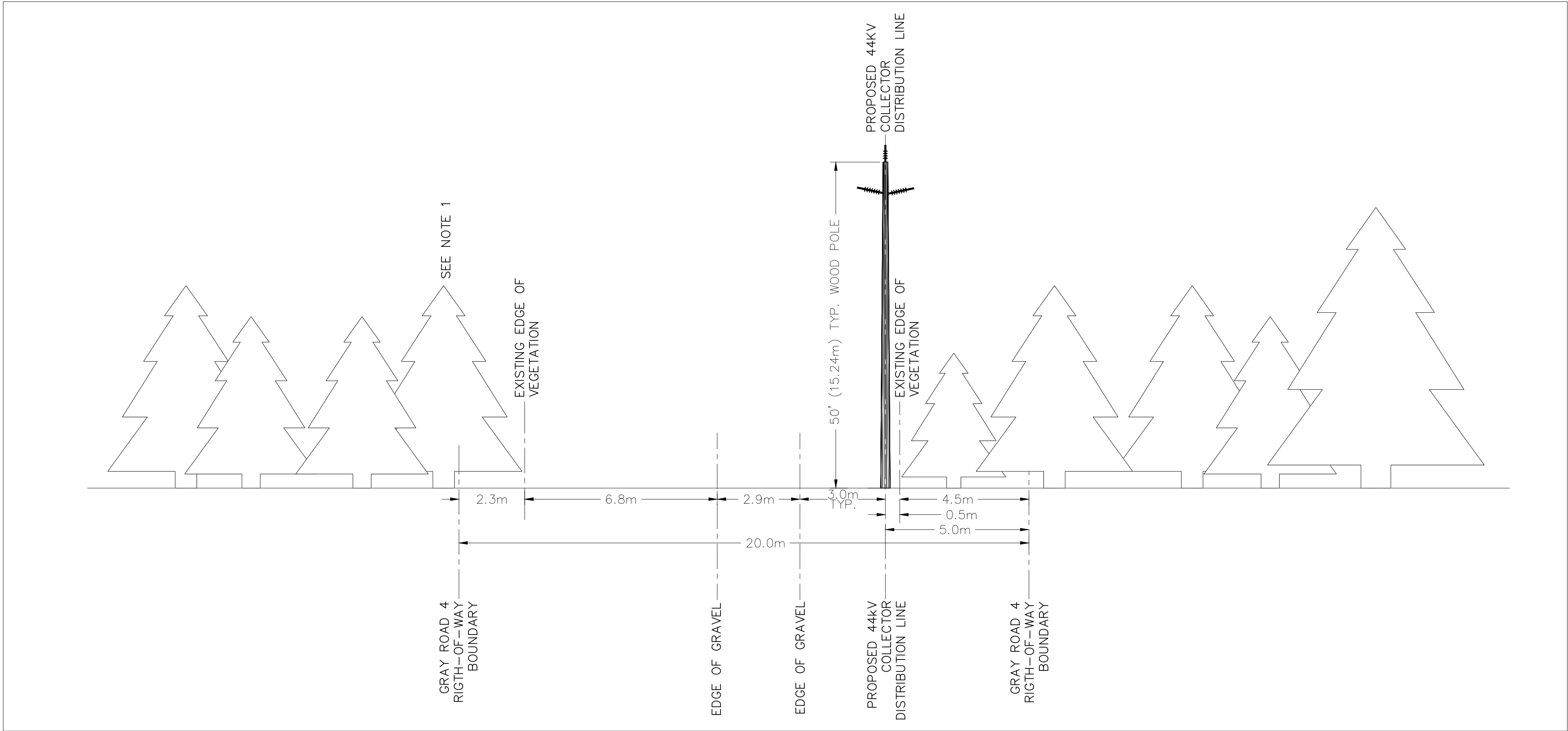
DRAWING DESCRIPTION

PLAN VIEW OF
44 kV COLLECTOR
DISTRIBUTION LINE (SHEET 3 OF 3)

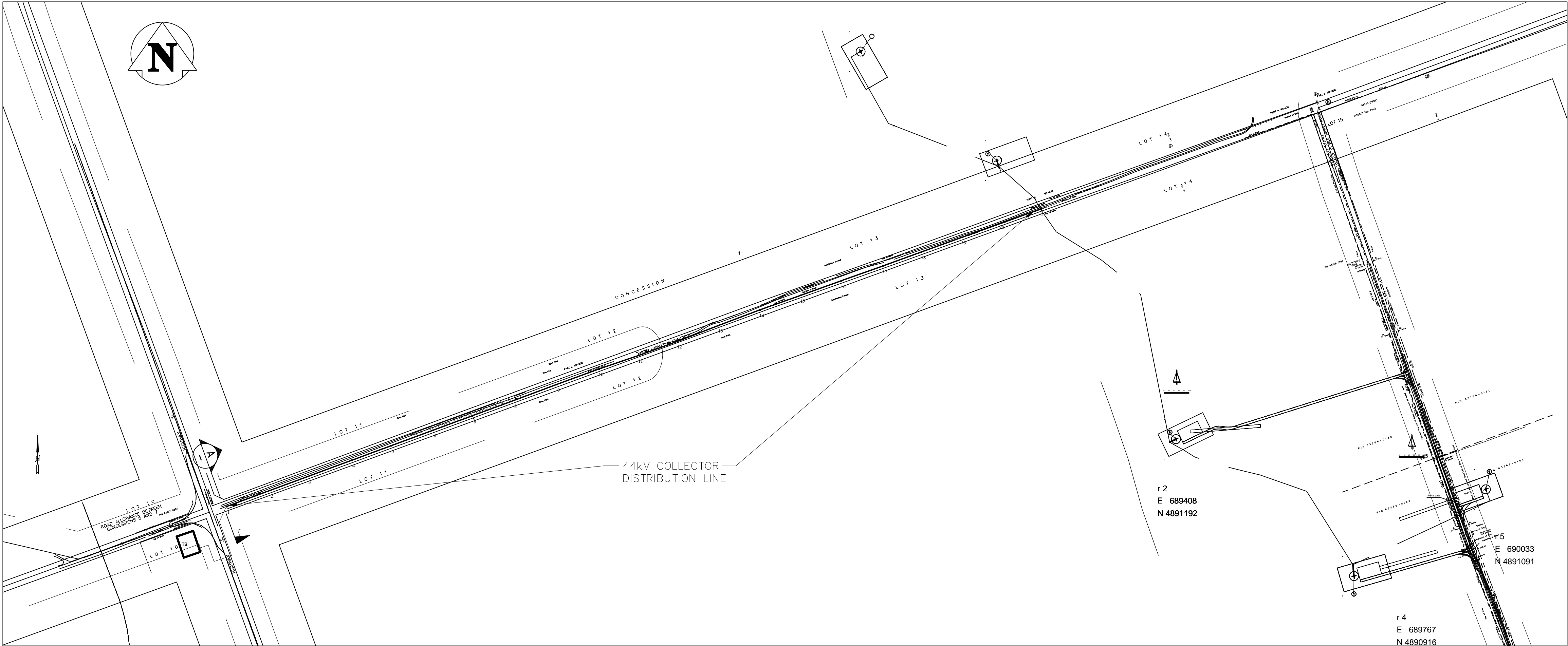
DRAWING NO:
1596930100-DWG-E0005

1

TO MAKE THEM



SECTION A
NTS



PLAN VIEW
1: 5000

| REFERENCE DRAWINGS | |
|--------------------|-------------|
| NO. | DESCRIPTION |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

NOTES:

- TREES WITHIN 3 METERS TO THE CENTER OF DISTRIBUTION LINE WILL BE BRUSHED BEFORE LINE CONSTRUCTION.

| | | | | | | | |
|-----------------|------------|-------------------|----------|-------------|--------|-----------|--|
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| C | 2015.01.19 | ISSUED FOR REVIEW | DB | SAm | SAm | RE | |
| B | 2014.11.28 | ISSUED FOR REVIEW | AMC | SAm | SAm | RE | |
| A | 2014.11.21 | ISSUED FOR REVIEW | DB | SAm | SAm | RE | |
| NO. | DATE | DESCRIPTION | PREPARED | REVIEW | DESIGN | AUTHORIZE | |
| REVISIONS/ISSUE | | | DRAFTING | ENGINEERING | | | |

SEAL

PERMIT STAMP

PRELIMINARY
DRAWING

NOT TO BE
USED FOR
CONSTRUCTION

| | | |
|--------------------------------|---------------------------|------------------------------|
| DESIGNED BY: S. AMJAD | PREPARED BY: D. BOWERS | REVIEWED BY: R. EFTEKHARI |
| AUTHORIZED BY: R. EFTEKHARI | DATE: 2014.11.20 | SCALE: AS NOTED |

THE CONTENT OF THIS DOCUMENT IS NOT INTENDED FOR THE USE OF, NOR IS IT INTENDED TO BE RELIED UPON BY ANY PERSON, FIRM OR CORPORATION OTHER THAN THE CLIENT AND TETRA TECH WEI Inc. (Tetra Tech). TETRA TECH WEI Inc.(Tetra Tech) DENIES ANY LIABILITY WHATSOEVER TO OTHER PARTIES FOR DAMAGES OR INJURY SUFFERED BY SUCH THIRD PARTY ARISING FROM THE USE OF THIS DOCUMENT BY THEM, WITHOUT THE EXPRESSED WRITTEN AUTHORITY OF TETRA TECH WEI Inc. (Tetra Tech) AND OUR CLIENT. THIS DOCUMENT IS SUBJECT TO FURTHER RESTRICTIONS IMPOSED BY THE CONTRACT BETWEEN THE CLIENT AND TETRA TECH WEI Inc. (Tetra Tech) AND THESE PARTIES. PERMISSION MUST BE SOUGHT REGARDING THIS DOCUMENT IN ALL OTHER CIRCUMSTANCES.

SUB-CONSULTANTS:

CLIENT:
WPD CANADA



PROJECT NAME:
SUMAC WIND RIDGE PROJECT

DRAWING DESCRIPTION:
TYPICAL STRUCTURE CROSS-SECTION
DRAWING FOR 44KV COLLECTOR
DISTRIBUTION LINE

| | |
|-------------------------------------|-----------|
| DRAWING NO: 1596930100-DWG-E0002 | REV: C |
|-------------------------------------|-----------|