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April 18, 2007

Mayor Will Wynn and Austin City Council Members
c/o Ms Wendy Walsh, Zoning Planner and Jerry Rusthoven
505 Barton Springs Road
Austin, TX 78704

Via email Wendy Walsh@ci austin tx us and
jerry rusthoven@ci austin tx us

Re COA Case Number C14-06-0191 (Fox Hill),
FEMA Onion Creek Protest of floodplain Case TRA_TX_218

Dear Mayor and Council Members

This letter is in response to the above referenced zoning case Just earlier this afternoon, when I was downloading the latest information packet from the city website regarding this case, I noticed the letter dated March 7 2007 from Rick Vaughn that was address to Wendy Walsh and me I never received a copy of this letter from Mr Vaughn or the city staff I m sure Ms Walsh thought I had actually received a copy directly from Mr Vaughn, but this was not the case

Lack of True Agricultural Purpose

I have previously expressed my concerns to the city staff regarding the lack of true agricultural use of the property My main point of contact in the Watershed Protection and Development Review Department was Ray Windsor with whom I have spoken several times regarding this issue I understand that the Watershed Protection department has signed off on the applicant's prior actions, despite the information I provided to them As I discussed with Mr Windsor, the applicant s activities on the property are inconsistent with any agricultural activities I have witnessed in my 29 years My father was a dairyman for 29 years and continues to make his living off of agriculture He, too, has not witnessed farming practices similar to those of the applicant in any other situation

Claim of Erosion Control

The applicant claims that work was done for erosion control Typically in this situation, terraces would have been built on the property to channel water along less steep slopes to limit erosion Instead, the applicant rented heavy construction machinery (a Caterpillar paddlewheel scraper) to move dirt between the 114 acre tract that is in the county and the 89 acre tract that is the subject matter of this zoning case The applicant conducted this work around Christmas of 2005 having

the laborer operate the machinery as if a flood was going to happen tomorrow (or the city would have staff available to respond to complaints) The applicant asked my father and me how we get our property to look so green in the winter time in aerial photos We advised him of the crops we planted and advised him that he should make sure to fertilize extra heavily due to the fact that – on the 114 acre tract – he exposed a lot of subterranean soil—discussed in more detail below

Prior Practices on the 114 Acre Tract in the County that Indicate the Applicant s true Intentions

Although not at issue in this zoning case, the applicant reshaped all of drainage areas on the 114 acres In doing so, significant areas of topsoil were placed in the low areas, resulting in less fertile soil at the surface After reshaping them he did plant wheat, but never fertilized it and never attempted to harvest it In a prior year, the applicant planted coastal, a perennial crop on a portion of the 114 acres but never harvested it either and destroyed most of it when reshaping the low areas

There was once a stock pond in the middle of the 114 acre tract, but as explained by Marc Knutsen at the time the work was done, it was filled in so that it wouldn t be considered a wetland area when he wanted to develop the property Additionally, part of a hill side was pushed with a bulldozer down toward Onion Creek for the purpose of reducing the amount of flood plain on the property—according to Mr Knutsen The great producing farmland that he covered up with gravel from the hillside has never produced a crop since

Finally, at various points trees were removed from this tract At first it was done to aid production but the latest removal occurred systematically just before a tree survey was conducted Some of the trees removed were in the low areas that would have helped limit erosion in the event that they weren t destroyed

Erosion Practices on the 89 Acre Tract in the City Limits

After the applicant purchased the 89 acres from Lumbermen's Investment Corporation (LIC), an extreme amount of work was done to remove vegetation from the eastern portion of the property Unlike the normal custom the property was not root plowed, resulting in a poor quality field On the portion of this property where wheat was planted, no effort was made to harvest the crop Additionally, no fence was ever constructed for the containment of livestock and the method of tree removal would limit any farmer's desire to harvest the wheat for hay or grain due to the roots and regrowth of the trees

In regard to the erosion control, a significant amount of soil was hauled from the 114 acre tract to the 89 acre tract At the time of the relocation of the soil the 114 acre tract had already been planted, resulting in the destruction of a significant portion of the crop which was never replanted After the relocation was complete a great deal of gravel remains exposed which is not productive agriculturally

Although I do not have the exact dates the Caterpillar equipment transported soil for a multiple number of weeks which resulted in more than any normal agricultural use

If you compare Exhibits A and A-1 of the city's packet on this case, you will notice the great variance in the flood plain. I've included the map prepared by Mr. Windsor (Exhibit C) that shows the change in the flood plain. By Mr. Windsor's calculations, it appears that approximately 16 acres were removed from the flood plain. The applicant contends that this is due to the more accurate—on the ground survey—as compared to the aerial survey. They failed to disclose the amount of soil relocation that was performed before the on the ground survey was conducted. In my conversation with Rick Vaughn at 5:10 pm today, he told me that he was unaware of the fact that dirt was moved from the 114 acre tract to the 89 acre tract. It is not a coincidence that this information was kept from Mr. Vaughn. Since he had no knowledge of it, he could truthfully write in his letter and other communications that there was no filling of the floodplain. On the portion of the 89 acres next to IH-35, the work that was done consisted mostly of adding dirt to an already relatively flat field (as viewed from the interstate). If you notice the difference in the location of the flood plain at the interstate, you will see that the applicant's proposed line (Exhibit A) is significantly further north than it was in Exhibit A-1. As shown in Exhibit B, the curb cut from IH-35 is just south of the applicant's flood plain line. Having traveled the interstate thousands of times over the years, I can attest that the elevation of the property at the access point to the interstate is at least a couple feet higher now than it was before the soil relocation was performed.

The applicant has recently begun to plow the field next to the interstate (consisting of the western portion of the 89 acres). However, no crop was planted on this portion of the property in 2006. This is yet another indication that the soil relocation was done to change the location of the flood plain and not to ease erosion.

LIC's Restrictions on the Property in the Private Restrictive Covenants that Govern the 89 Acres

Please note that paragraph 2.5 on Exhibit C-1 stipulates that LIC was contractually bound to support the applicant in any changes to FEMA. I was informed by LIC's general counsel that only about a third of the 89 acres was outside the flood plain, however, the zoning packet shows that the applicant is now stating that over 55% of the property is OUTSIDE the flood plain (48,513 of 87,884 acres). Since it is unlikely that LIC was that far off on the numbers and I understand that at one point the idea of placing soccer fields in the field next to the interstate was discussed due to the fact that the land was in the flood plain, the facts seem to suggest that the work was done as a means to allow the property to be developed and not as a means to limit erosion.

Paragraph (g) on Exhibit D states that the drainage patterns over the property were not to be changed unless the Committee approved such action. There is no indication that the Committee has yet been formed, and as discussed with the city staff, LIC has chosen not to enforce the restrictive covenants.

I believe that the council needs to have complete information when reviewing a zoning request. Although the city staff may have previously believed that the work done was agriculturally related, I hope that you will consider this information in making your determination of which portions of the property should be developed, and to what extent. The right to develop an

additional 16 acres (according to Mr Windsor on Exhibit C) at 12 units per acre results in an additional 192 units on the property This increase in density will have an immediate impact on downstream property owners, many of which are already facing flooding problems when it rains significantly

I hope you have adequate time to review this information before voting on this matter In the event that you choose to postpone this hearing until May 3rd, 2007 or such later date as to more fully understand this issue and to obtain more information from the applicant I understand If you choose to proceed with this matter, please consider the precedent that an approval of the current application will set

Please contact me if you have any questions

Sincerely,



Justin Spillmann

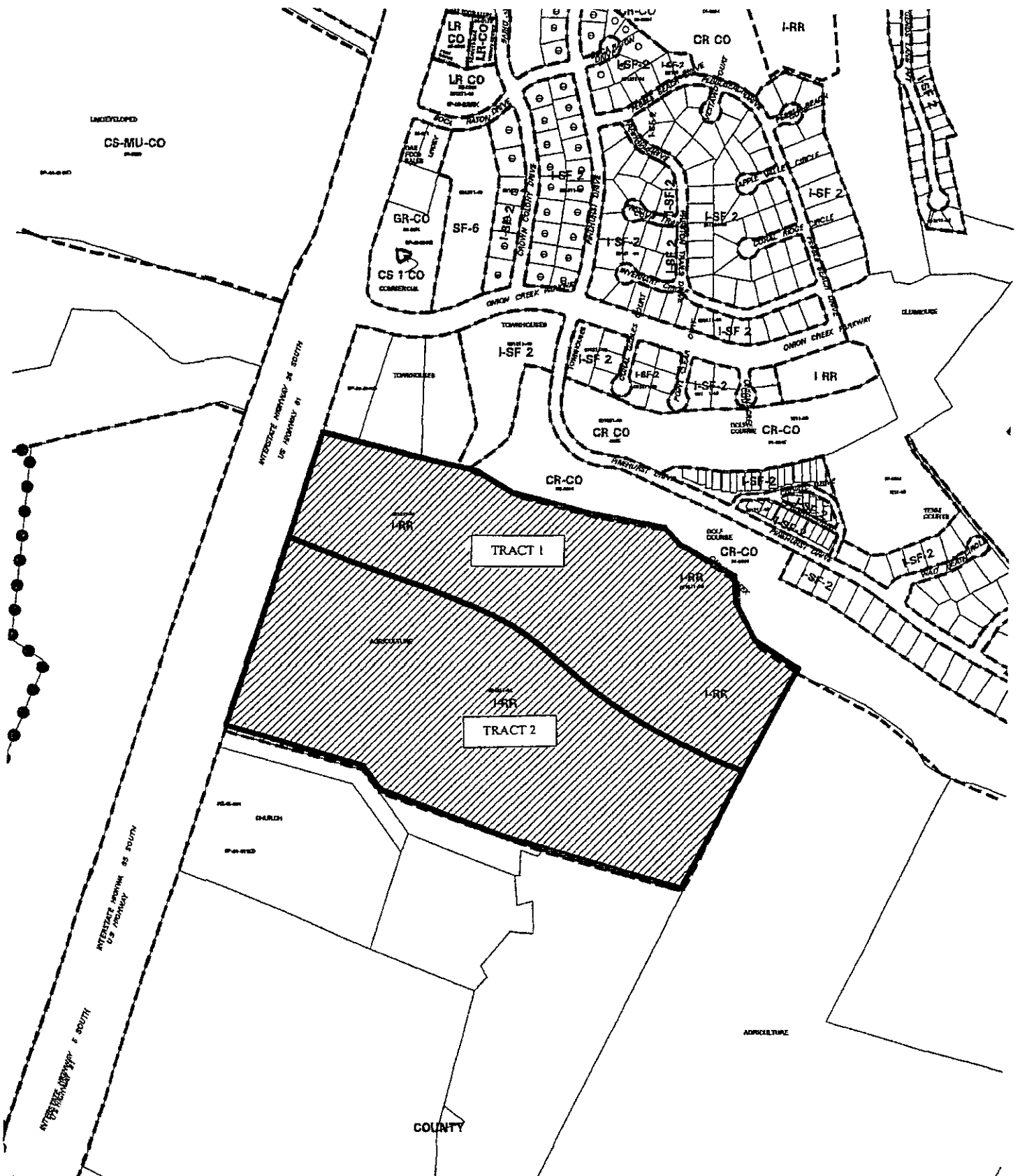
cc





Michael Anderson, PE, CFM
Michael Baker JR, Inc
Region VI_RMC

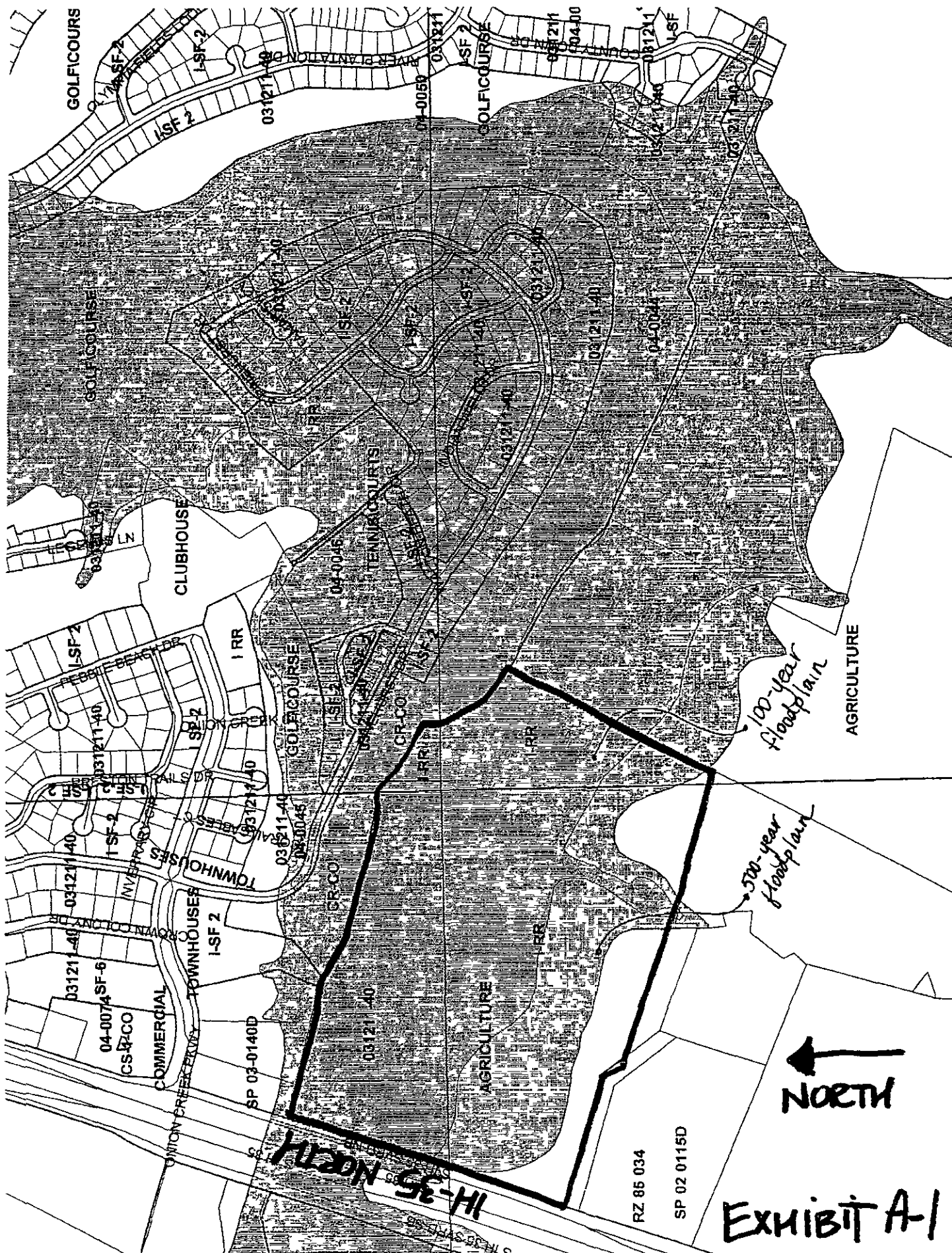
Via e-mail manderson@mbakercorp.com

Mr Jack Quarles P E
FEMA Denton Texas

Via e mail Jack.quarles@dhs.gov

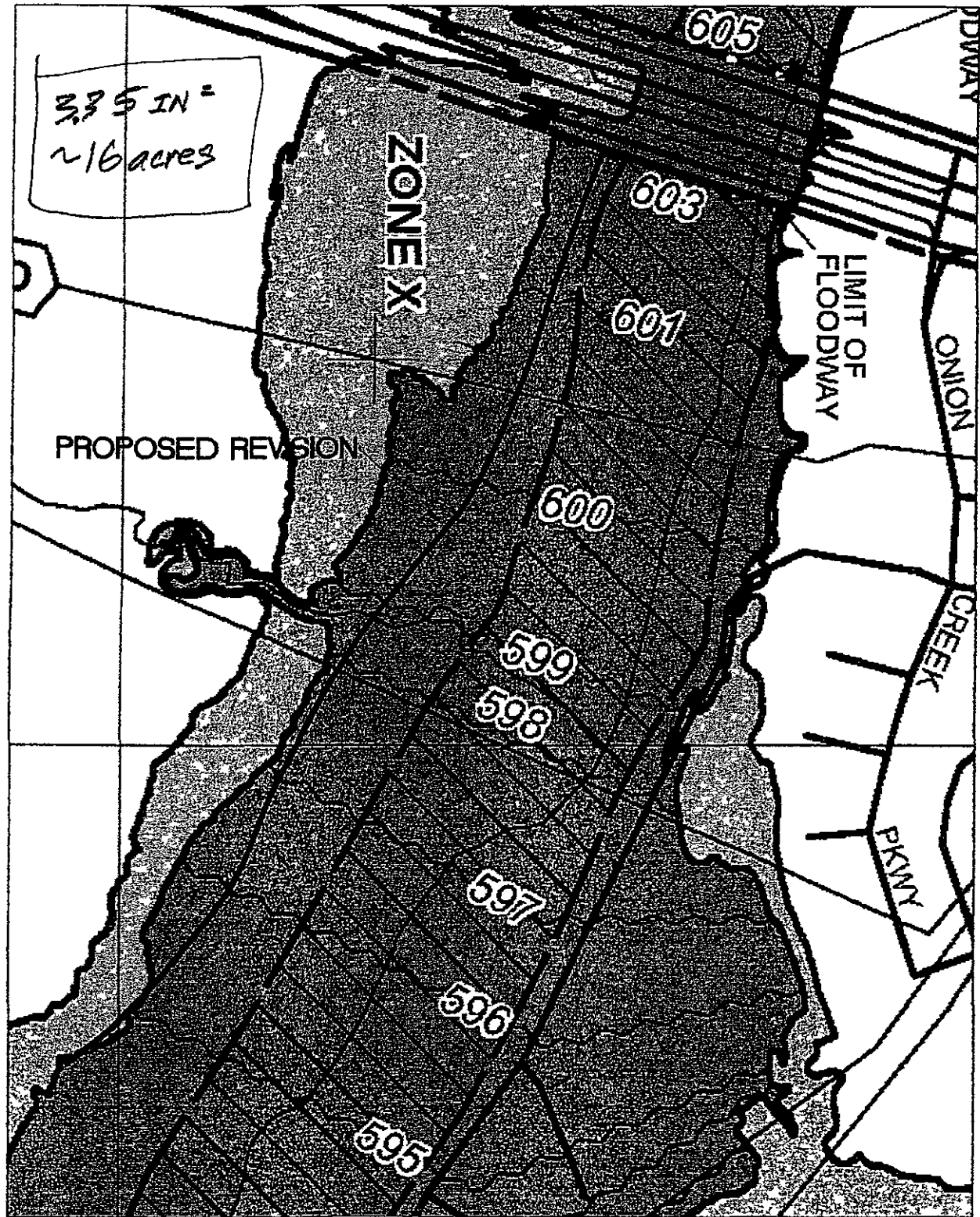


 = 500	SUBJECT TRACT		ZONING <i>EXHIBIT A</i>	CITY GRID REFERENCE NUMBER F11
	PENDING CASE			
	ZONING BOUNDARY			
	CASE MGR. WWALSH			
CASE # C14-06-0191 ADDRESS 11421 11717 S IH 35 SV RD. NB SUBJECT AREA (acres) 87.884			DATE 07 01 INTLS SM	



Curb Cut

Exhibit 'C'



PROPOSED
REVISION

1" = 460' ±

WINKLEY ENGINEERING, INC

CIVIL ENGINEERING & CONSULTING SERVICES

1101 Hwy 360 South - Building H Suite 100
Austin Texas 78746 (512) 328-3242

Exhibit "C-1"

25

LIC consents to and agrees to support Onion at its cost in applying for a Letter of Map Revision (LOMR) and/or a Letter of Map Amendment (LOMA) to better define the Onion Creek Flood Plain. This may also include cut and fill (i.e. in a Construction Letter of Map Revision (CLOMR)). It is understood that no CLOMR will be granted unless such activities do not raise the 100-year hydraulic surface elevation and the same are acceptable to the City of Austin, the U.S. Army Corps of Engineers and/or the U.S. Federal Emergency Management Agency (FEMA) as appropriate to their respective jurisdictions and powers.

*

2.6 Failure of the Committee to Act If the Committee fails to approve or to disapprove the plans and specifications (or any revised or modified plans and specifications) or to reject them as being inadequate within thirty (30) days after submittal thereof, it shall be conclusively presumed that the Committee has approved such plans and specifications (or such revised or modified plans and specifications) unless the plans or specifications otherwise do not satisfy applicable Governmental Regulations (defined in Section 3.2 below). If plans and specifications are not sufficiently complete or are otherwise inadequate, the Committee may reject them as being inadequate or may approve or disapprove them in part conditionally or unconditionally and or reject the balance. The deemed approval of plans or specs shall not be or construed to be the granting of a variance under Section 2.10 hereof as to the requirements set out in Sections 2.2 through 2.9. 1 3.2 3.3 3.8 (a, b, c or g) 3.10 3.11 3.12 3.13 or 3.16 (a, f, j, l or m)

2.7 No Waiver of Future Approvals The approval or consent of the Committee to any plans or specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications or other matter which is subsequently or additionally submitted for approval or consent by the same or different person.

2.8 Work in Progress The Committee at its option may inspect all work in progress to insure compliance with approved plans and specifications.

2.9 Limitation of Liability; Indemnity None of LIC, Onion, the Committee or any of the members of the Committee shall be liable in damages or otherwise to anyone submitting plans and specifications for approval or to any owner of land affected by this Declaration by reason of mistake of judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval of or failure to approve or to disapprove any plans and specifications, specifically including without limitation consequences of any defect in any plans or specifications. The approval of plans and specifications shall not be deemed or construed to be an opinion, warranty or representation that the plans and/or specifications are technically sound or that the Improvements described will be habitable or safe. EACH OWNER OF ANY PORTION OF THE PROPERTY WHO SUBMITS OR CAUSES TO BE SUBMITTED PLANS OR SPECIFICATIONS TO THE COMMITTEE HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS LIC, ONION, THE COMMITTEE AND ITS MEMBERS FROM ANY CLAIMS, CAUSES OF ACTION, LIABILITIES OR DAMAGES ARISING OUT OF CONSTRUCTION OF THE IMPROVEMENTS PURSUANT TO THE APPROVED PLANS AND SPECIFICATIONS.

Need Note too

Exhibit D

d Liquid or Solid Wastes No discharge shall be made into the sewage disposal system unless in accordance with the standards and ordinances approved by the City of Austin, Texas (as and when applicable to the Property) and any other Governmental Regulations which are applicable to the specific use. No use on the Property shall produce a wastewater discharge whose nature, quantity or quality is such that (i) it places an unreasonable burden on the wastewater treatment facility intended to serve any portion of the Property or (ii) its chemical composition would be detrimental to the safe, economical and lawful operation of such treatment facility.

e Rubbish and Debris No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Property and no odors shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or to its occupants.

f Noise No exterior speakers, horns, whistles, bells or other sound devices (other than the security devices used exclusively for security purposes) shall be located, used or placed on any of the Property without the prior written approval of the Committee.

g Drainage There shall be no interference with the established drainage patterns over any of the Property unless adequate provision is made for proper drainage and approved by the Committee. Prior to the occupancy of any structures on a portion of the Property, the owner thereof agrees to pay a part of the cost of construction of the storm water runoff detention facility which is provided for in the site plan for improvement of the Property approved by the City of Austin. Plans for the detention facility shall be approved prior to its construction by such engineer as may be designated by the Committee at the applicant's expense.

- where is this approved site plan?

h Hazardous Activities No activities shall be conducted anywhere on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no fireworks shall be discharged upon the Property, no firearm shall be discharged upon the Property, except in connection with protection of the owner's or occupant's person, family or property, and no open fire shall be lighted or permitted except in a contained barbecue quint (while attended and in use for cooking purposes) or within a safe and well designed interior fireplace.

i Temporary Structures No tent, shack or other temporary building, improvement or structure shall be placed upon the Property except that temporary structure necessary for the storage of tools and equipment and for office space for architects, builders and foremen during actual construction may be maintained with the prior approval of LIC. Such approval to include the nature, size, duration and location of such structure.

j Mining and Drilling No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth.