



ITEM FOR ENVIRONMENTAL BOARD AGENDA

BOARD MEETING

DATE REQUESTED: OCTOBER 17, 2007

**NAME & NUMBER
OF PROJECT:** COWDEN BOAT DOCK
SP-2007-0350DS

**NAME OF APPLICANT
OR ORGANIZATION:** A.E.C., Inc. (Contact: Phil Moncada- 478-8300)

LOCATION: 2100 Island Wood Road

PROJECT FILING DATE: August 10, 2007

**WPDR/ENVIRONMENTAL
STAFF:** Craig Carson, 974-7690
craig.carson@ci.austin.tx.us

**WPDR/
CASE MANAGER:** Craig Carson, 974-7690
craig.carson@ci.austin.tx.us

WATERSHED: Lake Austin (Water Supply Rural)
Drinking Water Protection Zone

ORDINANCE: Comprehensive Watershed Ordinance (current Code)

REQUEST: Variance requests are as follows:

1. To allow construction in the critical water quality zone (LDC Section 25-8-261 / 25-8-452).
2. To allow a cut greater than 4 feet (LDC Section 25-8-341).

STAFF RECOMMENDATION: Recommend approval.

**REASONS FOR
RECOMMENDATION:** Findings of fact have met.



MEMORANDUM

TO: Betty Baker, Chairperson
Members of the Zoning and Platting Commission

FROM: Craig Carson, Senior Environmental Reviewer
Watershed Protection and Development Review Department

DATE: August 1, 2007

SUBJECT: Cowden Boat Dock (SP-2007-0350DS)
2100 Island Wood Road

Variance Requests: Variance from LDC 25-8-261/25-8-452 – To allow construction within the Critical Water Quality Zone.

Variance from LDC 25-8-341- To allow a cut greater than 4 feet.

Description of Project Area

This proposed boat dock project is located at 2100 Island Wood Road. The property is located in the Lake Austin Watershed, which is classified as a Water Supply Rural Watershed. The site is not located over the Edwards Aquifer Recharge Zone. The applicant is proposing to demolish a boat dock which is currently cut into the applicant's shoreline and to expand it further inland to provide enough room for current sized boats. A slough of Lake Austin cuts through the northern end of the applicant's property. This slough is a channel easement that is dedicated by plat and is very narrow, approximately 10 feet in width. The applicant owns both sides of the slough. The existing boat dock extends into the southern shore of the slough. Additionally, a wooden bulkhead is currently installed along a portion of the southern edge of the slough.

Vegetation

This project is located along Lake Austin and the vegetation has been historically altered to a yard type setting. There are numerous trees located around this project which are mainly pecan and live oak trees.

Critical Environmental Features

There are no CEFs associated with this project.

Water/Wastewater

There are no water or wastewater systems associated with this project.

Variance Requests

The applicant is proposing to demolish an existing dock currently cut into the shoreline, enlarge the cut, and build a larger dock in the Critical Water Quality Zone. The project will require variances from Sections 25-8-261 (CWQZ Development), 25-8-452 (CWQZ; Water Supply Rural Watershed), and 25-8-341 (Cut Requirements). Section 25-8-452 states that no development is allowed within the Critical Water Quality Zone of a Water Supply Rural Watershed unless it is allowed under Section 25-8-261. This type of development is not allowed under 25-8-261 because of the cut, so it is necessary to ask for a variance from both code sections. In addition, the applicant is requesting a cut allowance of approximately 6 feet.

Similar Cases

The following project had similar construction issues and received recommendations from the Environmental Board that were subsequently approved by the Zoning and Platting Commission:

4600/4604 Island Cove (SP-2007-0202D)

The Environmental Board recommended approval the following project on June 6, 2007 by a vote of 7-0-0-1:

Conditions: Deploy silt boom as needed to minimize suspension and distribution of silt in water outside of fill area.

Recommendations

Staff recommends approval of the variance request because the findings of fact have been met.

Conditions

Staff recommends granting the variances with the following condition:

1. The contractor will present the environmental inspector with a construction management plan for approval at the preconstruction meeting. This plan shall include sufficient erosion controls, both on land and in the water to ensure sediment remains within the area being cut into the shoreline.

If you have any questions or need additional information, please feel free to contact me at 974-7690.

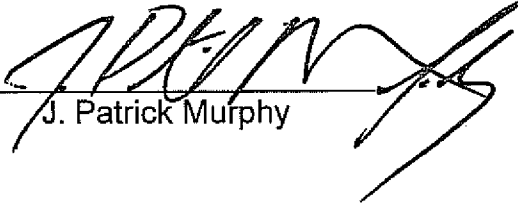


Craig Carson, Environmental Review Specialist
Watershed Protection and Development Review

Environmental Program Manager:


Ingrid McDonald

Environmental Officer:


J. Patrick Murphy



**Watershed Protection and Development Review Department
Staff Recommendations Concerning Required Findings
Water Quality Variances**

Application Name: Cowden Boat Dock
Application Case No: SP-2007-00350DS
Code Reference: LDC 25-8-261 and 25-8-452
Variance Request: To allow construction within the CWQZ of Lake Austin.

A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

Yes. Other property owners along the lake with existing boat slips cut into the shoreline prior to current regulations have been granted similar variances.

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

Yes, by extending this boat dock further into the shoreline, it allows boats to enter and exit the dock without the boat and its propeller wash disturbing the opposite shoreline. This will minimize erosion of the opposite shoreline.

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

Yes. A variance from these sections of the code, along with the proposed construction, is the minimum change necessary to allow the applicant privileges given to other property owners with similar constraints.

- c) Does not create a significant probability of harmful environmental consequences; and

Yes. The proposed construction associated with these variances will not create significant probability of harmful environmental consequences.

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

Yes. The water quality should remain unchanged on the property.

B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

1. The above criteria for granting a variance are met;

Yes. The criteria listed above for granting the variances have been met.

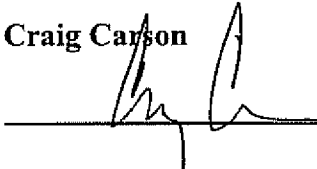
2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

Yes. Disapproval of the variances will result in the applicant's inability to enjoy similar variances given to other property owners.

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

Yes. The variances are the minimum change necessary to allow a reasonable use of lake access.

Reviewer Name: Craig Carson

Reviewer Signature: 

Date: August 22, 2007

Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).



**Watershed Protection and Development Review Department
Staff Recommendations Concerning Required Findings
Water Quality Variances**

Application Name:	Cowden Boat Dock
Application Case No:	SP-2007-0350DS
Code Reference:	LDC Section 25-8-341
Variance Request:	To allow a cut greater than 4 feet.

A. Land Use Commission variance determinations from Chapter 25-8, Subchapter A – Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

Yes. The variance will not be providing a special privilege to the applicant. The applicant is requesting to demolish and extend a boat dock further into the shoreline to accommodate for the increased size in today's boats and to ensure the boat and boat dock do not create a safety hazard in the narrow slough (only 10 feet wide) in which they are located.

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

Yes. This variance is not only requested to minimize navigation hazards in the slough, but also to increase the distance from the boat dock and the opposite shoreline of the slough. Increasing this distance between the boat dock and opposite shoreline greatly reduces the erosion caused by boats and their propeller wash.

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

Yes. A variance from this action of the code is the minimum change necessary to allow the applicant privileges given to other property owners with similar site constraints. The applicant only proposes to cut into the shoreline just enough to accommodate the larger sized dock, and to provide safer navigation in the narrow slough.

- c) Does not create a significant probability of harmful environmental consequences; and

Yes. The cuts will be stabilized with structural bulkheads. Additionally, by extending the dock further into the shoreline, the applicant is providing more room to maneuver boats in the narrow slough so there will be less erosion caused along the opposite shore of the slough.

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

Yes. Water quality should remain unchanged on this property.

B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

1. The above criteria for granting a variance are met;

N/A.

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

N/A.

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

N/A.

Reviewer Name: Craig Carlson

Reviewer Signature: 

Date: September 6, 2007

Staff may recommend approval of a variance after answering all applicable determinations in the affirmative (YES).

Phone: (512) 474-7377 Fax: (512) 474-4923

August 10, 2007

Ms. Victoria Hsu, P.E. Director
Watershed Protection Development Review
505 Barton Springs
Austin, Texas 78767

**RE: Boat Dock and Bulkhead Improvements
2100 Island Wood Cove
Wood Island Lot 18 Block A
Lake Austin-Man Made Channel/ Limited Width and Maneuverability
Request for Variance to Article 7, Division 1 Paragraphs 25-8-452 and 25-8-261
"Critical Water Quality Zone Development" and 25-8-341 "cut greater than 4 ft."
Watershed Variances -Findings of Fact**

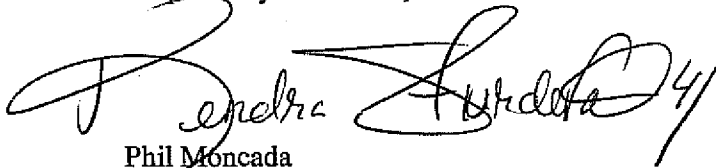
Dear Victoria Hsu;

The proposed improvements consist of a single-slip boat dock, necessary access and appurtenances. The piling bulkhead of which 17.5 feet is associated with the proposed boat dock. The location of the proposed bulkhead is in the boat slip area, which is already cut into the existing shoreline. Trees 19 inches or larger are to remain and be protected during construction.

Currently this portion of the lake, a channel easement as dedicated by the plat, is very narrow, approximately 10 feet in width. The Parks & Recreation Board has typically limits projections into the lake to twenty percent of the lake's width or a maximum of 30 feet. In this case the maximum projection into the channel would be six feet, not wide or deep enough for a standard boat dock. Therefore, in order to keep the existing channel easement as navigable as possible this boat slip is proposed to be cut into the existing channel embankment instead of the traditional extension into the water.

Thus, this letter is provided to you in support of a variance for the referenced project in the format associated with Appendix U of the City of Austin Environmental Criteria Manual.

Respectfully Submitted,



Phil Moncada

Phone: (512) 474-7377 Fax: (512) 474-4923

Land Use Commission variance determinations from Chapter 25-8, Subchapter A Water Quality of the City Code:

1. The requirement will deprive the applicant of a privilege of the safety of property given to owners of other similarly situated property with approximately contemporaneous development. Yes.

Adjoining properties and properties within the subdivision have similar situations for their existing boat docks.

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protect than is achievable without the variance. YES

This site is a part of the Wood Island Subdivision. New owners want to remodel existing boat dock to meet their needs since they have a larger boat.

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property. YES
- c) Does not create a significant probability of harmful environmental consequences. Yes

The bulkhead will provide a more stable shoreline and protect the existing site from potential loss of embankment. No erosion or soil loss to date.

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variances. Yes

B. Additional Land Use Commission variance determination for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transitions Zone), Section 25-453 (Water Quality Transition Zone), or Article 7 Division 1 (Critical Water Zone Restrictions):

- 1. The above criteria for granting a variance are met. Yes
- 2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property. Yes

Without the approval of this variance, this lake property would be left without the possibility of having an upgrade to the existing boat dock and the use and enjoyment of the adjacent lake.

A.E.C., Inc.

1301 S. I-H 35 Suite # 204.

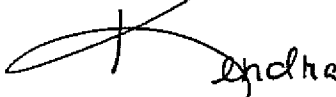
Austin, TX 78741

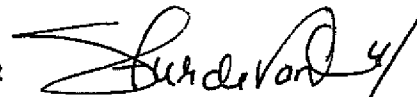
Phone: (512) 474-7377 Fax: (512) 474-4923

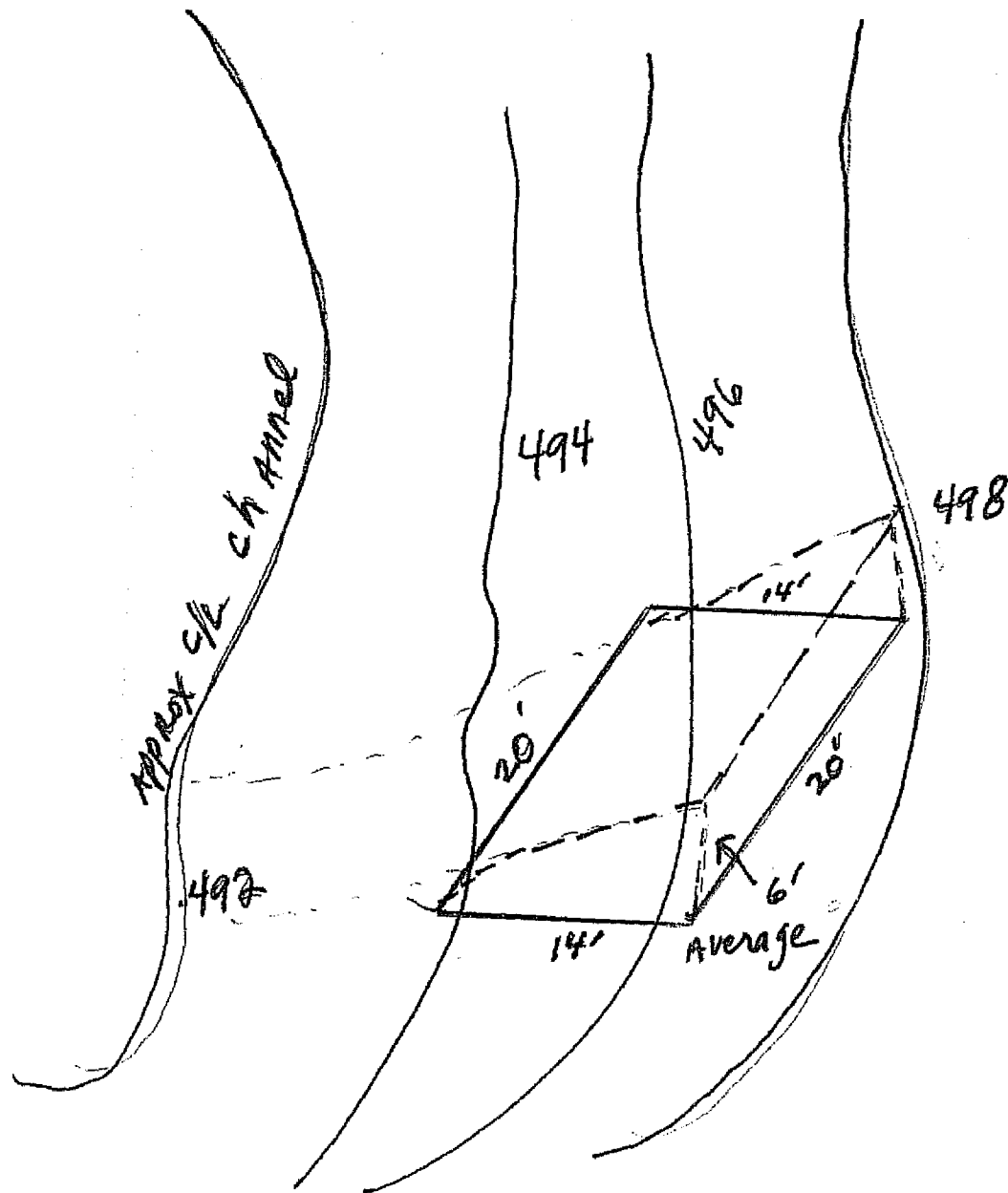
3. The variance is the minimum change necessary to allow a reasonable, economic use the entire property. Yes

Your support of the requested variance will be greatly appreciated. Please call if you have any questions.

Respectfully Submitted,


Phil Moncada


Katherine



Proposed cut

$$\begin{array}{ccc} 20' & \times & 14' \\ W & & L \end{array} \times \begin{array}{c} 6 \\ H \end{array} = 1680 \div 27 = 62 \text{ c.y.}$$

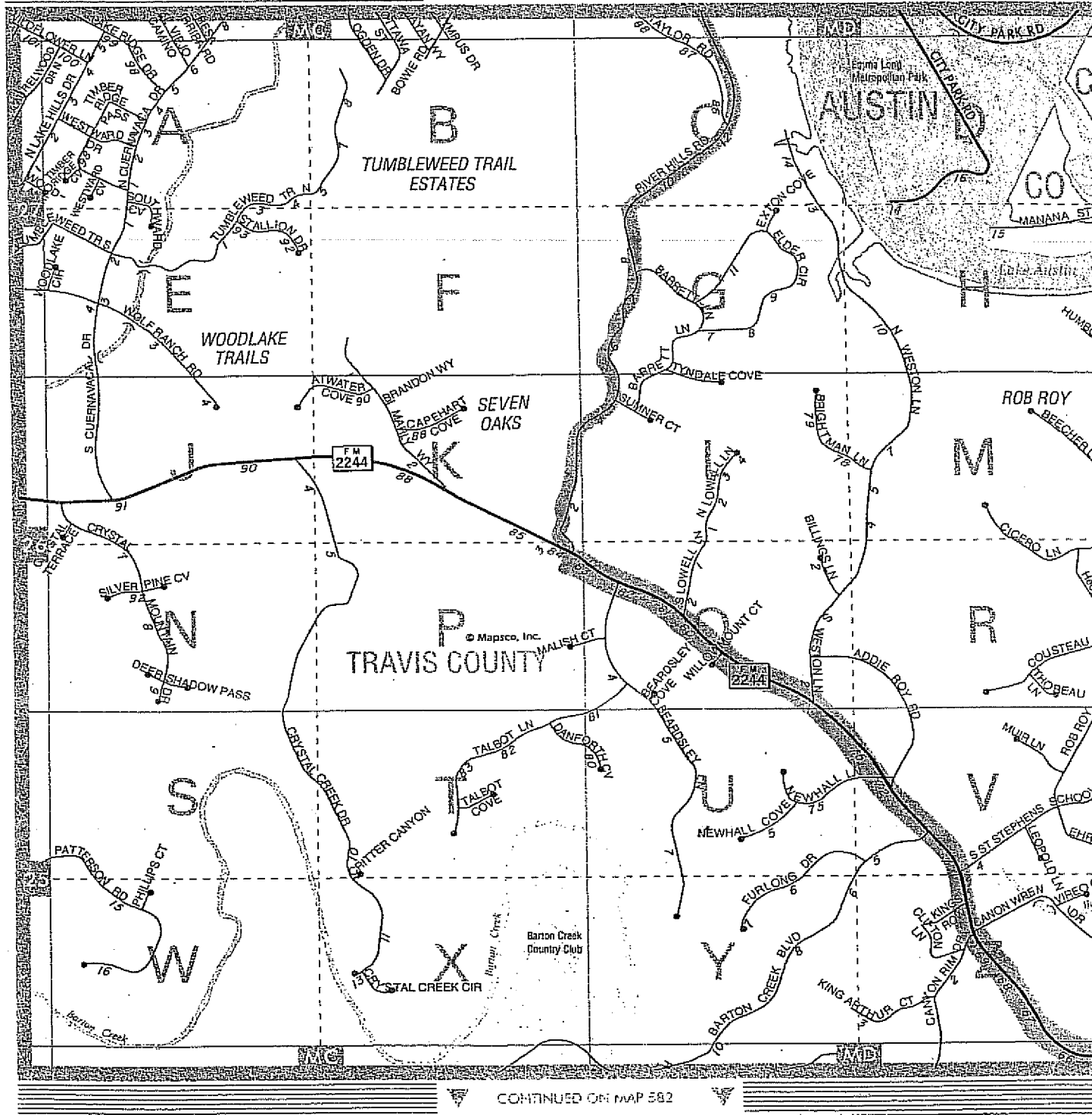
2100 ISLAND WOOD ROAD

$$1'' = 10'$$

Directions to 2100 Island Wood Road

- 1 Go west on Bee Caves Road, past Loop 360.**
- 2 Turn right on River Hills Road.**
- 3 Turn right on to Island Wood Road.**
- 4 2100 Island Wood Road is the first lot on the left hand side of the road.**

CONTINUED ON MAP 522



CONTINUED ON MAP 582

CONTINUED ON MAP 551

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CONTINUED ON MAP 5



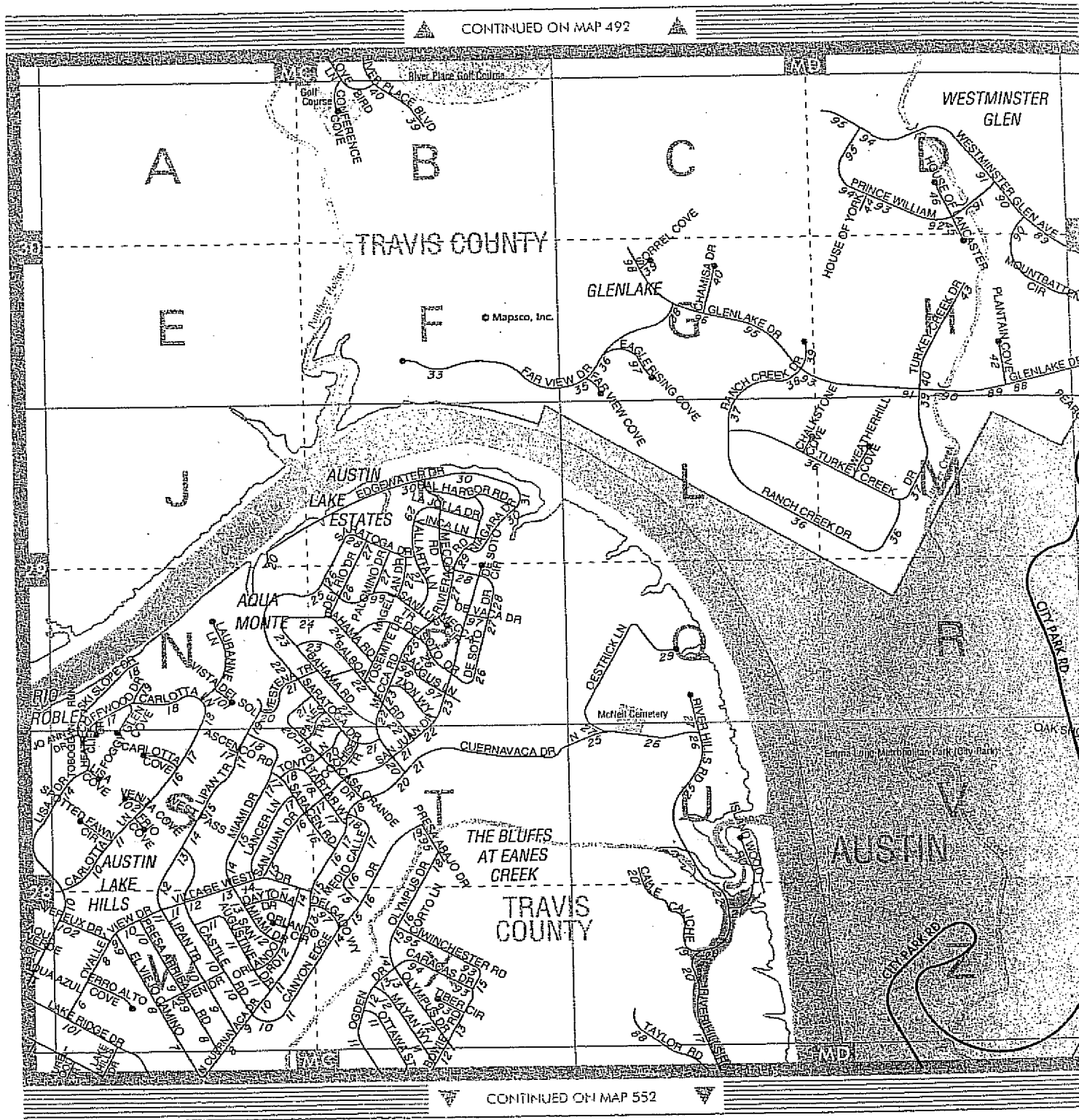
For information on streets not listed in this directory,
please call our Research Department at (800) 350-5308.

**** 8:00 AM - 5:00 PM Monday thru Friday ****





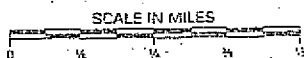
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CONTINUED ON MAP 521

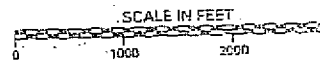
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CONTINUED ON MAP 523



For information on streets not listed in this directory,
please call our Research Department at (800) 950-5308.

*** 8:00 AM - 5:00 PM Monday thru Friday ***



SLAND WOOD

RIVER HILLS RD

SLAND WOOD RD





ENVIRONMENTAL BOARD MOTION 101707-B1

Date: October 17, 2007

Subject: Cowden Boat Dock (SP-2007-0350DS)

Motioned By: Dave Anderson, P. E.

Seconded by: Mary Ann Neely

Recommendation

The Environmental Board recommends **approval with conditions** of a variance request Land Development Code 25-8-261 and 25-8-452 – 1) To allow construction in the critical water quality zone and Land Development Code 25-8-341 2) To allow a cut greater than 4 feet.

Staff Conditions

1. The contractor will present the environmental inspector with a construction management plan for approval at the preconstruction meeting. This plan shall include sufficient erosion controls, both on land and the water (i.e. Silt Boom), to insure sediment remains within the areas being cut into the shoreline.

Rationale

Findings of fact have been met and there are no trees greater than 19 inches in diameter.

Vote 4-0-0-3

For: Anderson, Maxwell, Neely and Dupnik

Against:

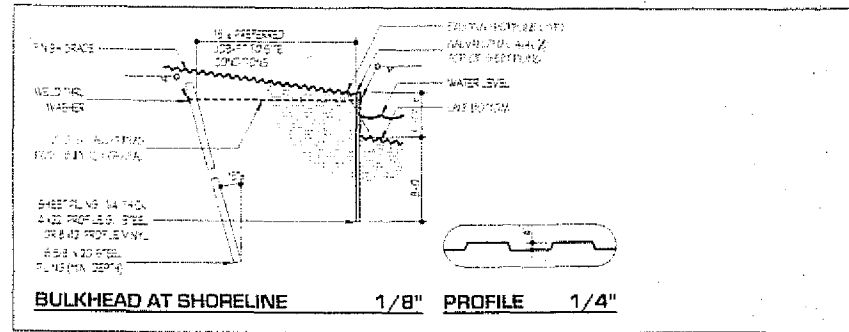
Abstain:

Absent: *Moncada, Ahart, and Beall

Approved By:


Dave Anderson P.E., CFM
Environmental Board Chair P.E.

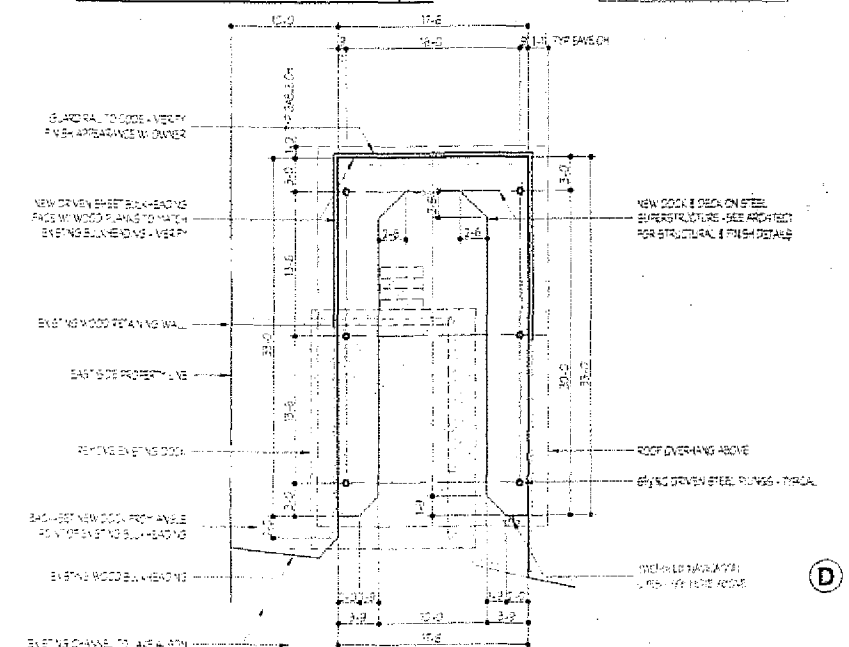
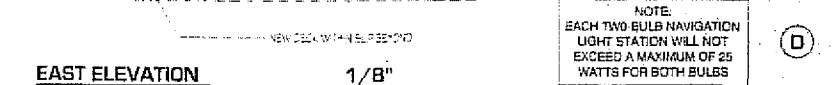
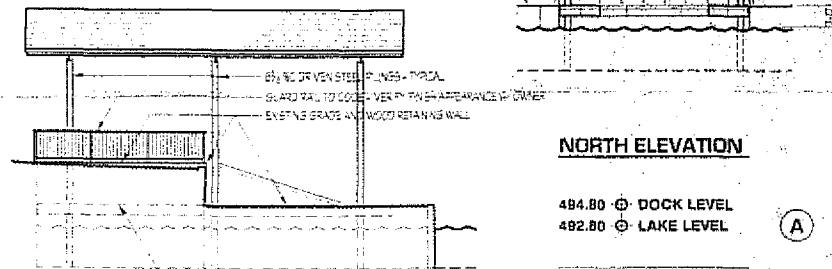
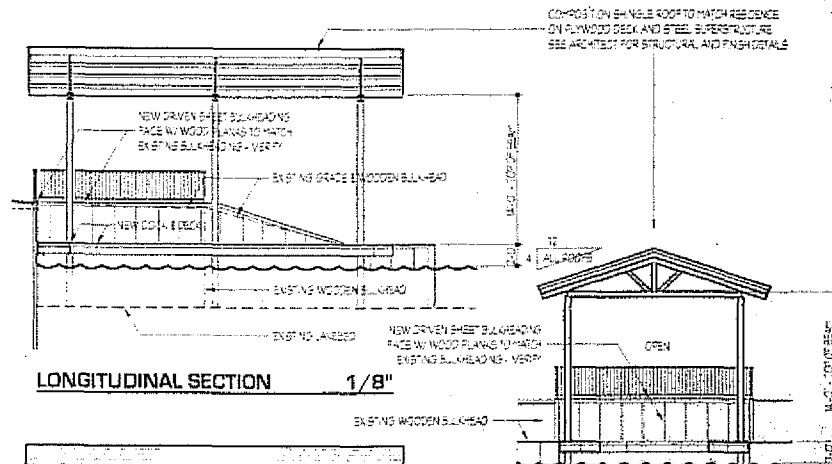
*Phil Moncada absent due to recusal.



PERMANENT EROSION CONTROL BULKHEADING AND SILT WALL DETAILS

1. SHORELINE EROSION PROTECTION AT THE LANDWARD EDGE OF THE PROPOSED DOCK SHALL BE INSTALLED USING BULKHEADING AS SHOWN IN COMPLIANCE WITH CITY OF AUSTIN REQUIREMENTS. SUCH INSTALLATION IS INTENDED FOR EROSION PROTECTION OF THE EXISTING SHORELINE ONLY, AND MAY NOT BE USED TO INCREASE OR ALTER THE EXTENT OR CONFORMATION OF THE SHORELINE ITSELF.

2. BULKHEAD SHEETING MAY BE INSTALLED BY DRIVING WITH DROP HAMMERS, VIBRATOR DRIVERS, DIESEL HAMMERS, OR PUSHING INTO PLACE WITH LIGHT EQUIPMENT. SHEETING SHOULD HAVE A MINIMUM CROSS SECTIONAL DEPTH OF 4" (OR GREATER) TO BETTER PROVIDE A WAVE BAFFLING EFFECT.



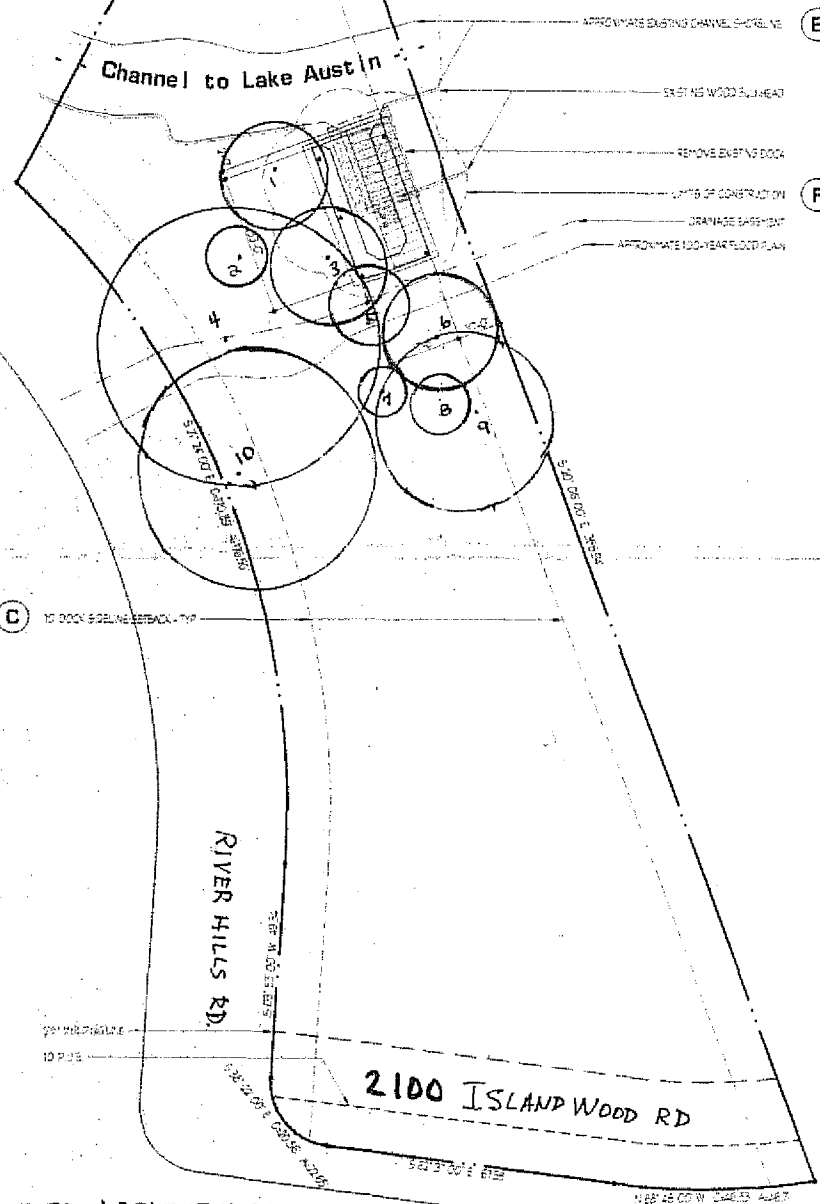
FLOOR PLAN 1/8"

Any trees that are removed during this construction which meet or exceed 18" O caliper will be mitigated through payment to the Urban Forest Replenishment Fund at the rate of \$75 per caliper inch; such payments will be the sole responsibility of the owner.

TREE LIST

- ① PECAN 13" TO BE SAVED
- ② PECAN 7" TO BE SAVED
- ③ LIVE OAK 16.5" TO BE SAVED
- ④ LIVE OAK 33" TO BE SAVED
- ⑤ PECAN 9.5" TO BE SAVED
- ⑥ PECAN 15.5" TO BE SAVED
- ⑦ PECAN 6.5" TO BE SAVED
- ⑧ PECAN 9.5" TO BE SAVED
- ⑨ HACKBERRY 18.5" TO BE SAVED
- ⑩ LIVE OAK 30.5" TO BE SAVED

* ALL TREES IN L.O.C. WILL UTILIZE TREE PROTECTION



SITE PLAN RELEASE NOTES:

- A ALL IMPROVEMENTS SHALL BE MADE IN ACCORDANCE WITH THE RELEASED SITE PLAN. ANY ADDITIONAL IMPROVEMENTS WILL REQUIRE SITE PLAN AMENDMENT AND APPROVAL OF THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPT.
- B APPROVAL OF THIS SITE PLAN DOES NOT INCLUDE BUILDING AND FIRE CODE APPROVAL NOR BUILDING PERMIT APPROVAL.

SITE PLAN

DRAWING	KEY:	SITE	TABULATIONS
A	LAKE LEVEL ELEVATION	EXISTING LOT AREA (0.8268 ACRES)	27034 SQ FT
B	EXISTING SHORELINE	EXISTING SHORELINE LENGTH (23.00% OF SHORELINE)	88.96 LIN FT
C	DOCK BLDG. SETBACKS	ALLOWABLE DOCK WIDTH (19.89% OF SHORELINE)	17.50 LIN FT
D	NAVIGATION LIGHTS		
E	75' CWOZ LINE		
F	CONSTRUCTION LIMITS		

1" = 20'



1. Install environmental sedimentation controls (if needed)
2. Install tree protection controls (if needed)
3. Hold Pre-Construction Meeting with Environmental Inspector
4. Remove existing dock
5. Install bulkheading and boat dock pilings
6. Construct docks
7. Obtain Final Inspection release

CONSTRUCTION SEQUENCE

- (1) The City of Austin General Construction Notes are incorporated by reference and made a part of this project for applicability in the event that unforeseen disturbance of the land area of the site is necessary to complete the approved construction. References: Exhibit 1A of the Boat Dock Packet (5/24/01) and Silt Fence Detail, Figures 1-8, of the Environmental Manual. The City of Austin Standard Notes for Tree and Natural Area Protection (Appendix P-2) are also incorporated by reference.
- (2) This project / site is located in the Lake Austin Watershed, is classified as Water Supply Rural, and shall be developed in accordance with the City of Austin Land Development Code.
- (3) Steel pilings to be grouted with "NO LEAD" P524 Red Iron Primer.
- (4) A dumpster is not required, scrap to be placed on-site.
- (5) Accumulated silt at shoreline above original topography may be removed at Owner's discretion.
- (6) All responsibility for the adequacy of these plans remains with the engineer / designer who prepared them. In approving these plans, the City of Austin must rely on the adequacy of the work of the engineer / designer. Release of this application does not constitute a verification of all data, information, and calculations supplied by the applicant. The engineer of record is solely responsible for the completeness, accuracy, and adequacy of his submittal, whether or not the application is reviewed for code compliance by City engineers.
- (7) This boat dock is an accessory use for a single family residence and shall be used as such. In no way is this boat dock allowed to be used commercially without this property undergoing a zoning change.
- (8) The Environmental Inspector will be contacted at: 499 2278 prior to construction.

GENERAL NOTES

DOCK CONTRACTOR: SIGNOR ENTERPRISES, INC.
17912-A HAMILTON POOL ROAD
AUSTIN, TEXAS 78738

OWNER: JAX COWDEN

LEGAL ADDRESS: LOT 18, BLOCK A, WOOD ISLAND
TRAVIS COUNTY, TEXAS
VOLUME 80, PAGE 146

STREET ADDRESS: 2100 ISLAND WOOD ROAD
AUSTIN, TEXAS 78733-2113

CONSTRUCTION PROPOSED FOR: FEBRUARY / MARCH, 2006

TRACKING #:

CASE #:

SUBMITTAL DATE:

DEVELOPMENT REVIEW AND INSPECTION DIVISION,
WATERSHED PROTECTION MANAGEMENT DEPARTMENT

DEVELOPMENT PERMIT #

REVIEWED BY

PARKS DEPARTMENT CERTIFICATION:

FOR THE CONSTRUCTION OF THE PROPOSED BOAT DOCKS, THIS SITE PLAN DOES NOT REQUIRE ANY VARIANCES FROM, AND IS IN FULL COMPLIANCE WITH, THE FOLLOWING REQUIREMENTS:

SECTION 25-2-1175 - LIGHTING AND ELECTRICAL STANDARDS

SECTION 25-2-1175 - 10' SIDEYARD SETBACK

20% MINIMUM LOT SHORELINE COVERAGE

10' MAXIMUM EXTENSION OF DOCK INTO WATER PERPENDICULAR TO SHORELINE

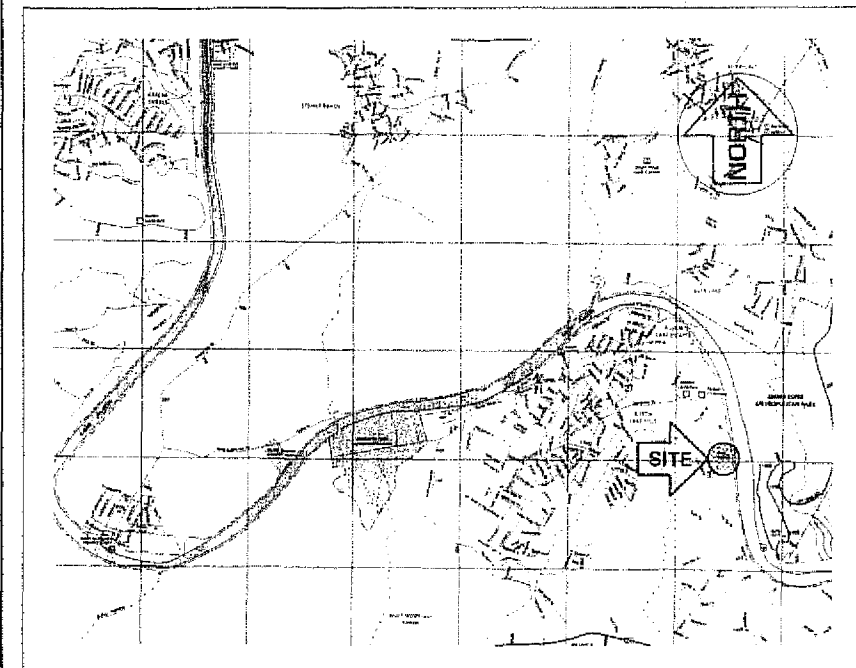
MAXIMUM ALLOWABLE NUMBER OF BOAT SLIPS

THIS SITE PLAN DOES NOT CREATE A NAVIGATIONAL HAZARD

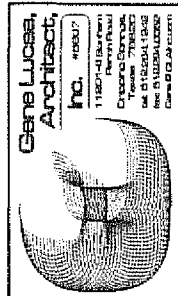
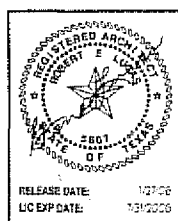
PARKS AND RECREATION DEPARTMENT (stamp optional)

PROJECT DESCRIPTION

A Land Use Commission Variance to Section 25-9-251/ 25-9-452 of the CDA Land Development Code, for construction within the Critical Water Quality Zone has been approved for this site by the Zoning and Platting Commission on



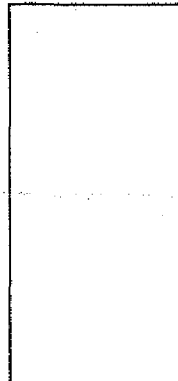
PROJECT LOCATION



The design and plans contained herein are copyrighted and may not be copied, in whole or in part, without express permission of the Architect.

Before proceeding with any work or ordering materials, the Contractor shall determine whether any all measurements at the building site and shall be responsible for their accuracy.

To the extent known, the Architect certifies that the drawing or plan and related specifications meet all applicable code requirements and shall be responsible for their accuracy.



Cowden Residence
Boat Dock & Lifts
2100 Island Wood Road
Austin, Texas

DATE: 12/06
DRAWN: GML
SHEET
C-1
1 OF 1

SP-70070350 D5

Common Variance Requests & Logical Methods for their Evaluation

Variance Request	Requirements	Intent	Mitigation Measures	Typical Examples
1. Cut & Fill	<ul style="list-style-type: none"> a) Max. 4 feet cut & fill allowed (except unlimited under buildings or within ROW). b) Must restore & stabilize cut & fill areas. c) Up to 8-ft. administrative variance allowed in DDZ if not located on a slope gradient >15% or <100 feet of classified waterway. d) Administrative variances given for stormwater facilities (e.g. flood & WQ structural controls). 	<ul style="list-style-type: none"> a) Maintain slope stability. b) Prevent loss of site character. c) Minimize site disturbance. d) Protect surface & groundwater quality by minimizing sediment discharges. 	<ul style="list-style-type: none"> a) Structural containment (retaining walls). b) Restoration & revegetation. c) Terracing. d) Minimum setback from significant features. e) Limit depth and/or height. f) Reduce IC (e.g. reduced parking). g) Enhanced erosion & sedimentation controls (see below for more detail). h) Reduced footprint of disturbance. 	Roadways, driveways, parking, level building slab, floodplain & drainage modifications.
2. Construction on Steep Slopes	<ul style="list-style-type: none"> a) No roadway or driveway on slope >15% unless necessary for primary access to >2 acres with gradient of <15% or building sites for at least 5 residential units. b) No buildings/parking structures on slope >25% or parking areas on slope >15%. c) Building/parking structure OK on slope 15-25% if terraced, vegetation restored, <10% footprint on slopes >15%. 	<ul style="list-style-type: none"> a) Maintain slope stability. b) Protect fragile environments. c) Prevent concentration of runoff. d) Reduce erosion & sedimentation. 	<ul style="list-style-type: none"> a) Structural containment (retaining walls). b) Restoration & revegetation. c) Terracing. d) Enhanced erosion & sedimentation controls: <ul style="list-style-type: none"> - Place temporary erosion basins off-line unless designed as a dam (i.e., not located in natural draws/channels). - Require site plan to phase clearing & grading, with temporary stabilization. - Require spoils to be hauled off-site or stored away from concentrated flow. - Require more robust perimeter controls (e.g. filter fabric-encased gabions); superior to silt fencing. 	Similar to cut & fill (e.g., buildings, parking); more common in western watersheds with steep slopes.
3. Stream Buffers (CWQZ & WQTZ)	<ul style="list-style-type: none"> a) CWQZ: dev't prohibited (except fences, parks, trails, docks, etc.). Utility lines may cross CWQZ (Director approval needed in BSZ). Street crossings in CWQZ limited (except Urban wsheds). Limits vary with wshed (e.g., BSZ, WS Rural) & waterway classification (major, intermed., minor). No variances to CWQZ in BSZ (SOS). b) WQTZ: 30% IC allowed in Suburban & 18% in WS Sub. wsheds; few variances requested. In BSZ & WS Rural wsheds, WQTZ same as CWQZ (except SFR OK if min. lot size 2 ac. & max. density 1 unit/3 ac.); WQTZ variances possible in BSZ (is not SOS). 	<ul style="list-style-type: none"> a) Keep development out of harm's way. b) Preserve function & character of riparian zones. c) Filter pollutants (esp. effective in undisturbed land in riparian soils). 	<ul style="list-style-type: none"> a) Grant public access easement for public trail. b) Headwaters protection (buffer & protect smaller streams not protected by current code). c) Native landscaping (Grow Green plant list, Integrated Pest Management plan, waste-water or stormwater irrigation limits). d) Reduce NSA IC. e) Ensure infiltration volume is maintained (compensate on other areas of site for lost buffers). f) Erosion Hazard Zone (technical setback defined by erosive potential of channel). 	CWQZ variances occasional for driveway crossings or encroachments to allow 'reasonable use', utility lines, reduction of floodplain area, redirect drainage ways. Very few WQTZ variances requested (except in BSZ).

Common Variance Requests & Logical Methods for their Evaluation

Variance Request	Requirements	Intent	Mitigation Measures	Typical Examples
4. CEF Setbacks	<ul style="list-style-type: none"> a) CEFs include: bluffs, canyon rimrocks, caves, sinkholes, springs, & wetlands. b) Protected by 150-300 ft. buffer; must be protected from runoff through drainage patterns and/or special controls. SFR lots may not include or be within 50 ft. of CEF. c) Administrative variances are allowed if all characteristics of the CEF are preserved. d) Wetlands may be mitigated. 	<ul style="list-style-type: none"> a) Preserve biologic, hydrogeologic, & aesthetic integrity of unique environmental features. 	<ul style="list-style-type: none"> a) Increased CEF setbacks on another part of site (e.g., linear stream setbacks where CWQZ does not exist). b) Stormwater attenuation: slow or divert runoff around feature. c) Off-site CEF protection. d) Native landscaping (Grow Green plant list, IPM plan, irrigation limits). e) Prohibit underground storage tanks or require tertiary containment. f) Constructed wetlands or wet pond to replace lost wetlands. 	<ul style="list-style-type: none"> Driveways, utility lines, drainage modifications.
5. Impervious Cover (IC); Density; Net Site Area (NSA)	<ul style="list-style-type: none"> a) Net site area IC & density limits for all watershed classifications except Urban. b) Urban watersheds use zoning IC limits only. c) IC allowed in WQTZ for Suburban watersheds (30%) and WS Suburban (18%). d) Variances not allowed for SOS IC limits. e) Boundary street IC deductions in all but Urban watersheds (impact greatest in WS watersheds). IC deducted from site if road IC higher than site IC limit. 	<ul style="list-style-type: none"> a) Minimize runoff & maximize infiltration to protect quality & quantity of surface & groundwater. b) Limits established based on sensitivity of watershed and impact on drinking water. c) Conserve open space. 	<ul style="list-style-type: none"> a) Increase capacity/size and/or upgrade type of structural controls (esp. innovative Low Impact Development controls). b) Acquire off-site lands to mitigate overall IC. c) Treat previously untreated off-site areas. d) Prohibit harmful land uses (e.g., service stations, auto repair, etc.). e) Increased creek setbacks. f) Native landscaping (Grow Green plant list, IPM plan, irrigation limits). g) Porous pedestrian/bike surfaces. h) Porous pavement for net additional IC (non-recharge ONLY). i) Clustered IC with undisturbed soils/vegetation. j) Increased creek buffers and headwaters protections. 	<ul style="list-style-type: none"> Increased amount of impervious cover or density; boundary street impacts; sites with little or no NSA.

Common Variance Requests & Logical Methods for their Evaluation

Appropriateness (Findings of Fact)

Findings for Land Commission Variances:

- (1) The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development;
- (2) The variance:
 - (a) is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;
 - (b) is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property; and
 - (c) does not create a significant probability of harmful environmental consequences; and
- (3) Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

Additional Findings for Stream Buffers:

- (4) The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and
- (5) The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

Enforceability of Mitigation Measures

HIGH for measures contained in Site Plans (commercial, MFR, industrial) or SFR subdiv. infrastructure: environmental inspection prior to project completion.

MODERATE to LOW for SFR plat notes, restrictive covenants & building permits within City Limits: no site plan/grading plan.

LOW for individual SFR construction outside City Limits: no building permits & associated oversight.

LOW for native landscaping/Grow Green, IPM plan, rainwater harvesting, and (outside Austin Energy service area) Green Building program.

Glossary

BSZ	Barton Springs Zone	NSA	Net Site Area
CEFs	Critical Environmental Features	ROW	Right-of-Way
CWQZ	Critical Water Quality Zone	SFR	Single-Family Residential
DDZ	Desired Development Zone	SOS	Save Our Springs water quality ordinance
Dev't	Development	WQ	Water Quality
ETJ	5-mile Extra-Territorial Jurisdiction	WQTZ	Water Quality Transition Zone
IC	Impervious Cover	WS Rural	Water Supply Rural watersheds
IPM	Integrated Pest Management	WS Suburban	Water Supply Suburban watersheds
MFR	Multifamily Residential	Wshed	Watershed

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SUPPLEMENTAL WATER SUPPLY AGREEMENT

This 2007 Supplemental Water Supply Agreement (“SWSA”) is made and entered into by and between the City of Austin (“Austin”) and the Lower Colorado River Authority (“LCRA”) (collectively, “Parties”).

1. RECITALS

- (a) As a conservation and reclamation district created under Section 59, Article XVI of the Texas Constitution, LCRA is charged with the control, storing, preservation, and distribution of the waters of the Colorado River and its tributaries within its boundaries for any useful purpose, and may use, distribute and sell such water for any such purpose, as authorized by state law. LCRA currently uses water rights it holds to store, divert and use water from the Colorado River to meet the water needs of its customers. These rights total more than 2.1 million AFY and authorize use for multiple Beneficial Uses in various locations on a firm and interruptible basis throughout the LCRA service area, including some locations outside the Colorado River Basin.
- (b) Austin and the LCRA have entered into various contracts and agreements related to water supply and water management, including but not limited to the agreements dated February 5, 1938, December 15, 1966, December 10, 1987, September 17, 1998, as amended February 3, 2000, and October 7, 1999 (the “1999 Agreement”) and January 1, 2000, as amended on November 17, 2004 (“FPP/SHC Agreement”), (collectively, the “Existing Water Sale Agreements”). The 1999 Agreement is intended to provide up to 325,000 AFY from a combination of Austin’s and LCRA’s water rights for Austin’s municipal water supply needs and other Beneficial Uses, and additional supplies for steam electric purposes at Lady Bird Lake (previously known as “Town Lake”) and Decker Lake.
- (c) Austin holds significant run-of-river water rights to divert and use water from the Colorado River for municipal and steam electric purposes. The Austin Water Utility (AWU) currently serves a population of approximately 830,000 people and associated businesses and in recent years has diverted from the Colorado River approximately 165,000 AFY to meet the water demands of this population. In addition, Austin Energy (AE) currently owns all or part of five power plants that rely in whole or in part on water drawn from the Colorado River for steam electric purposes, in amounts up to 40,000 AFY. Austin also uses water for recreation purposes at Lady Bird Lake and for purposes of irrigating certain city-owned recreational facilities.
- (d) Austin and Central Texas continue to experience rapid population growth and development, therefore the Parties anticipate that Austin’s Municipal Water Demands and demand for water to meet other needs will continue to increase in the coming decades. Austin estimates that, by about 2050, it will need more water than it will

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have available from the Existing Water Sale Agreements and Austin's Existing Water Rights.

- (e) LCRA is developing a water supply resource plan that will help it manage and plan for the long-term water supply needs of its customers.
- (f) On June 18, 2007, the Parties entered into a Settlement Agreement Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality ("2007 Settlement Agreement"). In addition to establishing a process for resolving a number of pending regulatory matters, the 2007 Settlement Agreement also established a formal water resource management partnership ("Water Partnership") to collaboratively manage water supplies and evaluate and implement strategies designed to optimize water supplies to meet water needs of the Parties, their customers, and the environment. Significantly, the 2007 Settlement Agreement is contingent on the execution of this SWSA. Once executed, the Parties may proceed to implement the remaining terms of the 2007 Settlement Agreement.
- (g) The Parties have executed this SWSA as part of the 2007 Settlement Agreement. Although this SWSA and the 2007 Settlement Agreement are two separate documents, this SWSA results from the same set of negotiations as the 2007 Settlement Agreement and the consideration provided by each Party under both agreements is intended to be applicable to and considered under both agreements.
- (h) The Parties recognize that planning for and providing the Supplemental Water as contemplated by this SWSA requires a concerted and collaborative effort of the Water Partnership and will likely require engineering, water availability, permitting and other studies to be performed. The Parties further recognize that, because of the very long-term nature of this effort, many unknowns may affect the decisions that must be made in the future regarding implementation of this SWSA. These unknowns may affect how the Parties decide to fund the studies and other expenses associated with the commitments made by the Parties under this SWSA. Accordingly, the Parties have by this SWSA established a framework that provides guidance and structure for the Parties yet allows the Parties to remain flexible in their decisionmaking and implementation so that unforeseen circumstances or changed conditions may be appropriately accommodated over time in a manner that is fair and reasonable to both Parties.

2. DEFINITIONS

- (a) **Acre-Foot:** The volume of water necessary to cover one acre of surface area to a depth of one foot, which is approximately 325,851 U.S. gallons.
- (b) **AE:** the City's of Austin's electric utility, known as Austin Energy.

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- (c) **AFY:** Acre-feet per year or acre-foot per year.
- (d) **Austin:** The City of Austin and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.
- (e) **Austin's Existing Water Rights:** The water rights to the Colorado River held by Austin as of the Effective Date of this SWSA, which total approximately 330,000 acre-feet of water per year (AFY) and include Certificates of Adjudication (CA) Nos. 14-5471, as amended, and 14-5489, as amended.
- (f) **Austin's Service Area:** Encompasses: 1) the area within the Impact Fee Service Area Boundary as amended from time to time by the Austin City Council; and 2) the area within the City of Austin Extraterritorial Jurisdiction and Municipal Boundaries as amended from time to time; and 3) all retail and wholesale service areas in which service is provided by the Austin Water Utility within Travis County or any County contiguous to Travis County; and 4) other facilities such as power plants, that are owned in whole or in part by the City of Austin and for which Austin is providing only its share of the water required for the facility wherever located within the Colorado River Basin.
- (g) **Austin's Municipal Water Demands:** A specific quantity of water reasonably expected to be needed by Austin within Austin's Service Area for its own municipal purposes over a specified period of time, after implementing Conservation.
- (h) **AWU:** Austin's Water and Wastewater Utility.
- (i) **Beneficial Use:** Use of the amount of water that is economically necessary for a purpose authorized by law, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose, and shall include water provided for instream flows or freshwater inflows to the bays and estuaries.
- (j) **Conservation:** Those practices, techniques, and technologies that will reduce the consumption of water, reduce the loss or waste of water, or improve the efficiency in the use of water so that a water supply is made available for future or alternative uses. For purposes of this SWSA, the term "Conservation" does not, however, include Direct Reuse or Indirect Reuse.
- (k) **Conveyance, Delivery or System Loss:** That amount of additional water needed to transport water downstream using the bed and banks of a stream or watercourse, through a canal system or other similar conveyance system to meet the requested or ordered amount of water at the Delivery Point(s) under the contract; or that amount of water that is reasonably expected to be lost due to evaporation, transpiration, recharge, seepage, leakage or other similar losses in the transportation of the water from the source of supply to the Delivery Point(s) under the contract.

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- (l) **Demand Projection:** The projected schedule of Austin's Municipal Water Demands, its other water needs, and estimated Conservation and Reuse, to be developed in accordance with Section 3.3.2.1 of this SWSA.
- (m) **Dispute or Controversy:** As defined in Section 4.7.1.
- (n) **Direct Reuse:** The Beneficial Use of: (a) municipal wastewater or industrial wastewater or process water that is under the direct control of a treatment plant owner or operator or industrial facility; or (b) agricultural tailwater, before such wastewater, process water or agricultural tailwater is either disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (o) **Diversion Point(s):** The point or points from which Austin diverts, pumps, or otherwise withdraws Supplemental Water from a reservoir, watercourse, stream or other water source, to be specified in accordance with Section 3.5 of this SWSA.
- (p) **Delivery Point(s):** The point or points where Austin accepts delivery of the water from LCRA as specified in Section 3.5 of this SWSA.
- (q) **Effective Date:** As specified in Section 4.26 of this SWSA.
- (r) **Existing Water Sale Agreements:** Collective name for those previously established contracts and agreements entered into by the Parties and relating to water supply and management, as identified in Section 1(b) of the recitals of this SWSA.
- (s) **Firm Water Supply:** A supply of water that could be provided during a repetition of the most severe historical drought for the lower Colorado River or other source of supply or combination of sources of supply from which water is available to Austin, as may be specified in the LCRA Water Management Plan, or other written determination by Texas Commission on Environmental Quality (TCEQ), the Texas Water Development Board, or applicable groundwater conservation district permit, water management plan and/or rules and regulations.
- (t) **FPP/SHEC Agreement:** The water sale contract between the City of Austin and LCRA dated February 3, 2000, and amended November 17, 2004, wherein Austin has purchased from LCRA a Firm Water Supply to use for steam electric purposes at the Fayette Power Project (FPP) and Sand Hill Energy Center (SHEC).
- (u) **Indirect Reuse:** The diversion of water from a watercourse, lake, or other body of state water, for Beneficial Use, including diversion into storage facilities, of a quantity of water that can be attributed to a specific quantity of Return Flows originating upstream of the Diversion Point.
- (v) **Interruptible Indirect Reuse:** Indirect Reuse by Austin, as allowed by the 2007 Settlement Agreement and this SWSA.

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- (w) **LCRA:** The Lower Colorado River Authority and all of its affiliates, departments, or divisions thereof, and all of its respective representatives, successors, and assigns.
- (x) **LCRA's Existing Water Rights:** The water rights to the Colorado River held by LCRA as of the Effective Date of this SWSA, which total more than 2.1 million AFY and include the right to divert and use up to 1.5 million AFY from lakes Buchanan and Travis (CA Nos. 14-5478 & 14-5482), and another 636,750 AFY under downstream run-of-river water rights associated with the Gulf Coast (CA No. 14-5476, as amended), Lakeside (CA No. 14-5475, as amended), Garwood (CA No. 14-5434, as amended), and Pierce Ranch (CA No. 14-5477, as amended) operations, as well as several smaller water rights for Lakes Marble Falls, LBJ (including Ferguson Power Plant), and Inks (CA Nos. 14-5479, 14-5480, & 14-5481), the Lometa Reservoir (Permit No. 5715), interbasin transfer of water to the City of Leander (Permit No. 5677), and for its downstream power plant operations (CA Nos. 14-5474 & 14-5473).
- (y) **LCRA's Raw Water System:** All untreated water supplies owned and controlled by LCRA that are not specifically dedicated for use solely by one or more specific LCRA customer(s), and which may, at LCRA's sole discretion, include all or portions of any New LCRA Water Supply at any point in time after a New LCRA Water Supply is acquired or developed to the extent that such New LCRA Water Supply is not specifically dedicated for use solely by one or more specific LCRA customer(s).
- (z) **New Austin Water Supply:** a water supply to be acquired or developed by Austin, at its sole discretion, after the Effective Date of this SWSA and for which Austin has independently pursued and paid for all costs of acquisition, development, study, permitting, management, operation, and use of such supply, but does not include a supply obtained through an amendment to Austin's Existing Water Rights or any supply owned by LCRA. A New Austin Water Supply includes the Return Flows derived from such supply.
- (aa) **New LCRA Water Supply:** a water supply to be acquired or developed by LCRA, at its sole discretion, after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have already been received.
- (bb) **Potential LCRA Water Supply:** a water supply that LCRA may, at its sole discretion, acquire or develop after the Effective Date of this SWSA, including any infrastructure required to increase the availability of Firm Water Supply available from LCRA's Existing Water Rights as they may be amended in the future, and for which required LCRA Board approvals, if any, have not yet been received. Upon receipt of all required LCRA Board approvals, a Potential LCRA Water Supply shall then be a New LCRA Water Supply.

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- (cc) **Parties:** Austin and the LCRA.
- (dd) **Return Flows:** Municipal wastewater or industrial wastewater or process water, or agricultural tailwater, that has been disposed of, discharged, or otherwise allowed to flow into a watercourse, lake, or other body of state water.
- (ee) **2007 Settlement Agreement:** The agreement between the Parties dated June 18, 2007, and entitled "Settlement Agreement by and between the City of Austin and the Lower Colorado River Authority Regarding Joint Water Resource Management and the Resolution of Certain Regulatory Matters Pending at the Texas Commission on Environmental Quality."
- (ff) **Supplemental Water:** The water to be supplied by LCRA under this Agreement.
- (gg) **Supplemental Water Supply Agreement or SWSA:** This agreement.
- (hh) **Supply Decision:** The decision regarding the source(s) of supply to be used to satisfy a particular Supply Increment, as recommended by the Water Partnership under Section 3.4.1 of this SWSA and confirmed by written agreement as required by Section 3.4.4.
- (ii) **Supply Increment:** A volume of water equal to part or all of the Supplemental Water to be provided under this SWSA, and the projected timing of use and intended use(s) thereof, as determined by the Water Partnership under Section 3.3.2.2.
- (jj) **Water Management Plan:** A plan required in specific water rights held by LCRA and approved by the TCEQ that defines LCRA's reservoir operations, water management program and policies under those water rights.
- (kk) **Water Partnership:** The collaborative relationship between the LCRA and Austin created by Section IV.A of the 2007 Settlement Agreement.
- (ll) **1999 Agreement:** An agreement between the Parties dated October 7, 1999, and entitled "First Amendment to December 10, 1987 Comprehensive Water Settlement Agreement Between City of Austin and Lower Colorado River Authority."

3. CONTRACT TERMS

3.1. QUANTITY OF WATER

Subject to the terms and conditions contained in this SWSA, LCRA agrees to provide to Austin, and Austin agrees to purchase from LCRA, a quantity of firm Supplemental Water sufficient to meet Austin's Municipal Water Demands through December 31, 2100, such quantity not to exceed 250,000AFY. Notwithstanding the foregoing, LCRA's obligation to provide Supplemental Water under this SWSA shall be reduced by a volume equal to the volume of any New Austin Water Supply obtained by Austin at any

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time during the term of this SWSA. Further, the Parties understand and acknowledge that the Supplemental Water LCRA is obligated to provide under this SWSA may not be sufficient to meet all of Austin's Municipal Water Demands and other water needs through December 31, 2100, and that Austin's Demand Projection provided under Section 3.3.2.1 of this SWSA represents Austin's best estimate of its water supply needs at the time it is provided and does not and is not intended to bind Austin to implement or adopt any particular policies concerning Conservation, Reuse, or water supply development and that Austin's Demand Projection may change due to changes in policy, future needs for additional water for steam electric purposes, or other factors such as the rate of population growth, and Austin's implementation of Water Conservation and Reuse.

3.2. PURPOSE OF USE

The water supplied under this SWSA is intended to address municipal water needs of Austin through December 31, 2100 that exceed the amounts available under the Existing Water Sale Agreements or from New Austin Water Supplies. Austin represents to LCRA and LCRA relies on such representation that all water made available under this SWSA will be used by Austin to meet Austin's Municipal Water Demand. Further, the Supplemental Water under this SWSA may be used for steam electric and other power plant purposes, but only after first being considered by the Water Partnership consistent with Section VI of the 2007 Settlement Agreement.

3.3. TIMING OF USE

3.3.1. Relationship to 1999 Agreement

Unless by separate written agreement of the Parties, Austin may not use any Supplemental Water to be made available under the SWSA until its firm water demands exceed the amounts of water available for Austin's use under the Existing Water Sale Agreements. Nothing in this SWSA, however, is intended to prevent Austin from obtaining a New Austin Water Supply at any time.

3.3.2. Demand Schedule – Demand Projection and Supply Increment.

3.3.2.1. Demand Projection

- a. On or before December 31, 2010, Austin shall develop and submit to the Water Partnership a Demand Projection, to be updated every five years thereafter or on such other schedule as the Water Partnership may determine and that coincides with the water demand estimates developed as part of the State Water Plan and associated regional water planning process. The Demand Projection shall specify:

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- (i) Austin's Municipal Water Demands through December 31, 2100, by decade and estimated location of use;
 - (ii) Austin's estimated water needs through December 31, 2100, for industrial (including steam electric), irrigation/agricultural, and recreation purposes, by decade and estimated location of use;
 - (iii) Austin's estimate of Conservation to be implemented by decade through December 31, 2100; and
 - (iv) Austin's estimate of the location, timing, and magnitude of any Direct Reuse or Interruptible Indirect Reuse project(s) that Austin plans to implement.
- b. For purposes of this SWSA, Austin shall consider estimates of projected water demand developed for the State Water Plan, but may provide a Demand Projection that differs from such estimates. To the extent that the Demand Projection differs from the estimates developed for the State Water Plan, Austin shall provide documentation supporting its Demand Projection, and shall seek conforming modifications to the State Water Plan as may be necessary or convenient for purposes of permitting or funding of the Supplemental Water Supply to be provided under this SWSA.
 - c. Prior to development of the Demand Projection required by subsection (a) above, Austin agrees that it will cooperate with LCRA's efforts to develop its water supply resource plan referred to in Section 1(e) above by providing LCRA with preliminary information related to the components set forth in subsection (a) of this Section 3.3.2.1.

3.3.2.2. Timing of Supply Increment Determination

No later than June 1 in the year after Austin's Municipal Water Demand for the preceding year exceeded 225,000 AFY, and upon receipt of each updated Demand Projection received thereafter, the Water Partnership shall, within twelve months, determine:

- a. whether to initiate a process to decide a Supply Increment, and
- b. if the process is initiated, the quantity of water, timing, and purpose(s) of use of the Supply Increment.

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3.3.2.3. Acceleration of Supply Increment Decision Process

Notwithstanding Section 3.3.2.2 above, the Water Partnership may determine a Supply Increment at any time they deem necessary, in light of the water supply conditions that exist at that time, including any opportunities to partner with other LCRA customers that may arise related to a Potential LCRA Water Supply, as identified in the notice to be provided by LCRA under Section 3.10.2 of this SWSA (“Required Notices”).

3.4. SUPPLY DECISION AND SOURCE OF SUPPLY

LCRA’s obligation to reserve, acquire, develop, and make available Supplemental Water under this SWSA, if any, and Austin’s obligation to pay for Supplemental Water will be triggered by the Supply Decision as set forth in this section.

3.4.1. Supply Decision

Upon a determination of the quantity, timing, and purpose(s) of use for each Supply Increment, and subject to the limitations on the source of supply as set forth under Section 3.4.2, the Water Partnership shall consider the possible source(s) of supply identified under Section 3.4.2 and make a recommendation to and seek appropriate authorizations from the Parties’ appropriate governing body regarding which source(s) of supply should be used to fulfill the Supply Increment in accordance with this section.

3.4.1.1. If all or part of the water to satisfy the Supply Increment is legally and physically available to LCRA from LCRA’s Raw Water System and not otherwise allocated for use by another LCRA customer, then the Water Partnership shall recommend that such supply be selected and reserved by LCRA in accordance with Section 3.4.4 below.

3.4.1.2. If all or part of the water needed to satisfy the Supply Increment is not legally and physically available to LCRA, then the Water Partnership will make a recommendation regarding the source or combination of sources of supply that would best satisfy Austin’s Municipal Water Demand for the particular Supply Increment using the following criteria:

- a. The decisionmaking guidelines, including the Parties’ mutual interests, as identified in Sections 5.C and 6 of Exhibit A of the 2007 Settlement Agreement;
- b. The magnitude of the Supply Increment and timing under which Austin will use such Supply Increment;
- c. The timing and magnitude of the cost necessary to ensure that the water supply needed for a Supply Increment will be legally and

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physically available for Austin's use, including but not limited to any studies, permitting, design, acquisition, construction, and infrastructure costs;

- d. Timing and cost required to acquire regulatory approvals;
- e. The existence of other water supply projects or water supply needs for any third party that may provide an opportunity for partnering or cost-sharing with those third parties, including but not limited to any opportunities related to a Potential LCRA Water Supply;
- f. The status of any water supply contract(s) between LCRA and any third parties;
- g. The impacts, if any, to other LCRA customers;
- h. The quality of the water supply and costs related to integrating the supply into Austin's system; and
- i. Any other factors the Water Partnership deems necessary and appropriate.

3.4.2. Possible Sources of Supply

The Supplemental Water to be provided by LCRA may only include a source of water that will be legally and physically available to LCRA on and after the date when Austin's actual use of the water is expected to occur, and is limited to:

- 3.4.2.1. water available, if any, under Austin's Existing Water Rights (including such rights as they may be amended in the future) consistent with the 1999 Agreement, as clarified by Section VII.B of the Settlement Agreement,
- 3.4.2.2. water legally and physically available from the LCRA Raw Water System that is not otherwise allocated for use by another LCRA customer,
- 3.4.2.3. any Return Flows derived from any water supplies made available to Austin under this SWSA that are determined to be available for Interruptible Indirect Reuse in accordance with Section 3.8 of this SWSA, or
- 3.4.2.4. A New LCRA Water Supply not specifically dedicated for the sole use of one or more of LCRA's other customers or otherwise limited in its use by LCRA Board Policy, or local, state, or federal law and

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which LCRA does not intend to incorporate into LCRA's Raw Water System; and

3.4.2.5. A Potential LCRA Water Supply, subject to approval from and at the sole discretion of the LCRA Board.

3.4.3. Use of Austin's Existing Water Rights

To the extent that Austin's Existing Water Rights (including such rights as they may be amended in the future) have not been fully used under the Existing Water Sale Agreements, then any amounts available for use under such rights to satisfy one or more Supply Increments (or portions thereof) shall be used first before using any other source of Supplemental Water made available under this SWSA, unless the Water Partnership determines that some other arrangement would serve to further optimize the water available to the Parties.

3.4.4. Contents and Effectiveness of Supply Decision

The Water Partnership's recommended Supply Decision shall include not only the source of supply to satisfy the Supply Increment, as selected pursuant to Section 3.4.1, but shall also include recommendations concerning those items contemplated by Sections 3.5.2.1, 3.5.2.3, 3.6(d), 3.7.1.2, 3.7.2, 3.7.3, 3.8.2, 3.13, 4.2, and 4.4.1 of this SWSA, and any other matters the Water Partnership deems appropriate or required for consideration by the Parties' governing boards.

A Supply Decision of the Water Partnership shall be effective only upon receipt of any required approvals from the Parties' governing bodies necessary to implement the Supply Decision and upon execution by both Parties of a separate written agreement confirming such Supply Decision, which upon such execution shall hereby constitute an amendment to this SWSA and be incorporated by reference as an exhibit to this SWSA for all purposes.

3.4.5. Supply Decision to Use LCRA Supply

Upon a Supply Decision that the Supply Increment (or portion thereof) should be provided from LCRA's Raw Water System, a New LCRA Water Supply, or a Potential LCRA Water Supply, LCRA shall take any and all actions necessary to ensure that such supply will be legally and physically available for Austin's use at the time Austin expects to use the Supply Increment, including reservation of water for Austin. Further, Austin shall begin to pay for such Supply Increment (or portion thereof) in accordance with Section 3.7 of this SWSA.

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3.4.6. Relationship to New Austin Water Supply

Nothing in this Section 3.4 shall prevent Austin from using a New Austin Water Supply to fulfill all or part of the Austin Municipal Water Demand at any time. Once a Supply Decision to use Supplemental Water becomes effective, however, Austin may not replace any portion of that Supplemental Water with a New Austin Water Supply unless the Parties otherwise mutually agree.

3.5. DIVERSION POINT OR DELIVERY POINT

3.5.1. General

Austin may designate any reasonable Diversion Point(s) within Austin's Service Area, except as limited by this Section 3.5.2. Austin shall identify the Diversion Point(s) or Delivery Point(s), with such points to be identified coincident with the Water Partnership's identification of the particular Supply Increment (or portion thereof) from which such diversion or delivery will be made and the location within the Austin's Service Area where the water will be used. For Supplemental Water to be made available for diversion from the Colorado River or its tributaries, the Diversion Point(s) shall be deemed to be the Delivery Point(s) unless otherwise agreed to by the Parties.

3.5.2. Location Dependent Limitations

If the water to be made available under this SWSA is legally and physically available for diversion from Lake Travis, Lake Austin, Lady Bird Lake, or such other Diversion Point(s) along the Colorado River from Longhorn Dam downstream to the Travis/Bastrop County Line, Austin agrees:

- 3.5.2.1. the diversion rate from Lake Travis shall not exceed 300 MGD, unless the Water Partnership recommends a higher diversion rate as part of its Supply Decision;
- 3.5.2.2. any diversion must comply with any instream flow requirements set forth in the water rights under which such diversions are made; and
- 3.5.2.3. if the Diversion Point(s) will be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant), Austin will propose the new Diversion Point(s) to the Water Partnership and the Water Partnership will develop a mutually agreeable approach to address the following considerations:
 - a. Water quality concerns;
 - b. Streamflow conditions;

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- c. Accounting for the source of water for the proposed location; and
- d. Any other accounting or environmental issues the Water Partnership deems appropriate.

3.5.3. Intake Elevations

Austin acknowledges and agrees that LCRA's obligations under this SWSA shall not require LCRA to make additional releases of water from LCRA's Raw Water System to raise the water elevations or flows at the Diversion Point(s) at a particular time sufficient for Austin's intake and/or diversion facilities to operate.

3.6. CONVEYANCE, DELIVERY OR SYSTEM LOSS

- (a) For all diversions of Supplemental Water from the Colorado River located below Longhorn Dam, Austin shall bear all Conveyance, Delivery or System Losses incurred in the transport of the water from Longhorn Dam to Austin's Diversion Point(s).
- (b) For all diversions of Supplemental Water upstream of Longhorn Dam, LCRA shall bear all Conveyance, Delivery or System Losses that cannot be allocated under Austin's Existing Water Rights.
- (c) For any Supplemental Water for which the Delivery Point is not located on the Colorado River, Austin shall bear all Conveyance, Delivery or System Losses.
- (d) The Water Partnership shall develop a mutually agreeable means for determining the amount of Conveyance, Delivery or System Losses attributable to Austin's water use under this SWSA and the LCRA shall include such calculation in its invoices to Austin.

3.7. AMOUNT AND TIMING OF PAYMENT

Austin shall pay all reasonable and necessary costs associated with Supplemental Water as set forth below. Further, Austin's obligations to pay shall continue upon Termination as may be set forth in any written agreement regarding a Supply Decision as contemplated by Sections 3.4.4 and 4.4.1 of this SWSA.

3.7.1. Supplemental Water from LCRA's Raw Water System

- 3.7.1.1. For Supply Increments (or portions thereof) to be provided from LCRA's Raw Water System, Austin's payments shall commence when the Supply Decision becomes effective as set forth under Section 3.4.4 and LCRA's reservation of such water for Austin's use.

- 3.7.1.2. Austin shall pay LCRA's then current and Board-approved rates,

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charges, and fees applicable to Firm Water Supply for any Supply Increment (or portion thereof) to be made available from LCRA's Raw Water System, after accounting for Conveyance, Delivery or System Losses, credits for Interruptible Indirect Reuse as set forth in Section 3.8 of this SWSA, and any reductions in reservation fees as may be determined appropriate based on the recommendation of the Water Partnership, as set forth herein:

For a particular Supply Increment (or portion thereof) to be provided from the LCRA Raw Water System, the Water Partnership shall include as part of its Supply Decision a recommendation regarding an appropriate reduction, if any, in the amount of reservation fees to be paid for the Supplemental Water. The Water Partnership shall base its recommendation, if any, on the following factors:

- a. implementation by Austin of Interruptible Indirect Reuse under the 1999 Agreement that could allow some portion of the reservation fees paid by Austin under the 1999 Agreement to be applied towards reservation of some portion of Supplemental Water from the LCRA's Raw Water System;
- b. implementation of a system operation of LCRA's and Austin's Existing Water Rights together, as they may be amended in the future, that may be recommended by the Water Partnership, and which increases the amount of Firm Water legally and physically available for diversion and use of water from the Colorado River, which increase is confirmed by TCEQ or other applicable regulatory authority;
- c. the status of LCRA's water sale contracts with existing customers at the time the Supply Decision is to be made; and
- d. any other factor the Water Partnership deems appropriate. In any event, the Water Partnership may not recommend any reduction in reservation fees under this subsection if it would result in an adverse impact on the firm water rates to be paid by LCRA's other customers.

3.7.2. Other Sources of Supplemental Water

In the event that the Supplemental Water for a particular Supply Increment (or portion thereof) will not be provided from the LCRA Raw Water System but will instead be provided from all or a portion of a Potential LCRA Water Supply or New LCRA Water Supply to be set aside and dedicated specifically for Austin's sole use, then Austin shall pay LCRA an amount necessary to cover its share of costs associated with the

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acquisition, development, study, design, construction, permitting, management, operation (including diversion, storage, and conveyance), maintenance, and use of the source of supply that will be used to satisfy the Supply Increment (or portion thereof). The schedule, manner of cost recovery, and the Parties' respective ownership interests shall be determined by the Water Partnership and shall be established prior to initiation of any action by LCRA that is required to develop the Supply Increment or that requires LCRA to incur any such costs. Such determination shall be included in the Supply Decision recommended for implementation to the Parties' respective governing bodies.

3.7.3. New Austin Water Supply

If a New Austin Water Supply is incorporated into a system operation along with LCRA's water rights and Austin's Existing Water Rights, then the Water Partnership will determine whether such incorporation imposes additional expenses on LCRA that are uniquely attributable to Austin's use of the New Austin Water Supply. If the Water Partnership determines that such additional expenses will be incurred, it will also determine a schedule and manner by which Austin will pay such costs.

3.8. INTERRUPTIBLE INDIRECT REUSE

In calendar years when Austin accumulates a monetary credit through Interruptible Indirect Reuse that results in a total credit amount equal to the annual payment value for water deliveries under the Existing Water Sale Agreements pursuant to Section IV(B)(4)(a) of the 2007 Settlement Agreement, Austin may receive a credit under this SWSA for any additional volumes of Interruptible Indirect Reuse in that calendar year as set forth in this section.

3.8.1. Colorado River Sources

3.8.1.1. Implementation

Where the Supplemental Water provided by LCRA under this SWSA originates from the Colorado River, implementation of Interruptible Indirect Reuse of Return Flows shall be governed by Sections V.A(1), V.B(1), and V.B(2) of the 2007 Settlement Agreement.

3.8.1.2. Credit Against Payments

Upon implementation of Interruptible Indirect Reuse under this section 3.8.1, LCRA agrees to provide Austin with a monetary credit on a per acre-foot basis at a one-to-one ratio, such that for each acre-foot of water diverted for Interruptible Indirect Reuse, LCRA shall provide a credit equivalent to the per-acre foot rate being paid by Austin for any Supply Increment(s) provided from LCRA's Raw Water System.

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3.8.2. Other Sources

Implementation of Interruptible Indirect Reuse of Return Flows originating from Supplemental Water provided by LCRA under this SWSA that is not from the Colorado River shall be subject to Section V.A(1) of the 2007 Settlement Agreement. Further, the method for implementing and accounting for such Interruptible Indirect Reuse, including the appropriate environmental flow criteria and credit against payments to be provided, shall be developed by the Water Partnership prior to Austin initiating any such Interruptible Indirect Reuse of such Return Flows and shall give due consideration to:

- a. the source of supply;
- b. the environmental flow criteria in Exhibit B of the Settlement Agreement, as such criteria may be amended by the Water Partnership;
- c. any restrictions that may be imposed by local, state, or federal law in effect at the time the water is made available that may affect the overall availability of such Return Flows for Interruptible Indirect Reuse; and,
- d. for projects to be located above the confluence of Onion Creek and the Colorado River (but below Walnut Creek Wastewater Treatment Plant):
 - (i) Water quality concerns;
 - (ii) Streamflow conditions;
 - (iii) Accounting for the source of water for the proposed location; and
 - (iv) Any other accounting or environmental issues the Water Partnership deems appropriate.

The Parties agree to amend Exhibit B of the 2007 Settlement Agreement as needed to incorporate any new environmental criteria that may be developed by the Water Partnership under this Section 3.8.2 and that such criteria shall apply regardless of whether the return flows derived from this Supplemental Water are used to implement Interruptible Indirect Reuse under the Existing Water Sale Agreements or this SWSA.

3.8.3. New Austin Water Supplies

Return flows derived from a New Austin Water Supply are not subject to Section IV of the 2007 Settlement Agreement or this Section 3.8, except as follows:

3.8.3.1. Colorado River Supplies

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Austin agrees that it will only implement Indirect Reuse of return flows derived from a New Austin Water Supply from the Colorado River after satisfying the environmental criteria contained in Exhibit B of the 2007 Settlement Agreement, as it may be amended from time to time by the Water Partnership.

3.8.3.2. Other Sources

Austin's Indirect Reuse, if any, of Return Flows derived from a New Austin Water Supply from a source other than the Colorado River shall be implemented consistent with any necessary local, state, or federal regulatory approvals to implement such Indirect Reuse. Further, Austin agrees to work through the Water Partnership to ensure that such Indirect Reuse will not unreasonably interfere with LCRA's management and operation of the Colorado River.

3.9. LOCATION OF USE: SERVICE AREA AND INTERBASIN USE

3.9.1. Service Area

Austin shall use the Supplemental Water to be made available under the SWSA only within Austin's Service Area for its own purposes, as defined in Section 2(f) of this SWSA .

3.9.2. Use of Supplemental Water outside Colorado River Basin

3.9.2.1. General

Colorado River water made available under this SWSA may not be transferred or used outside of the Colorado River basin unless such transfer or use is within Austin's Service Area and is otherwise in strict compliance with LCRA Board Policies, LCRA water rights and a final permit, if required, for interbasin transfer (IBT) issued by the TCEQ.

3.9.2.2. Acquisition and Ownership of Interbasin Transfer Permit.

If all or part of any Supply Increment will be used by Austin outside the Colorado River Basin and all or part of that supply will derive from a water right owned by LCRA and requires an interbasin transfer permit to be obtained from the TCEQ, LCRA shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit for the Term of this SWSA. To the extent that the Supplemental Water to be provided is derived from Austin's Existing Water Rights, Austin shall apply for and, if granted, use due diligence to maintain such interbasin transfer permit.

3.9.2.3. Rights Regarding Return Flows

a. Reliance by Third Parties

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In any permit proceeding involving the interbasin transfer of Supplemental Water for use outside the Colorado River Basin, the Parties agree to use their best efforts to reduce third parties' reliance on any Return Flows derived from Supplemental Water that are discharged outside the Colorado River basin by seeking as part of the permit(s) the legal right to implement Direct Reuse in accordance with state law and indirectly reuse such Return Flows within Austin's Service Area or the lower Colorado River basin consistent with this SWSA and the 2007 Settlement Agreement.

b. Wholesale customers

Austin agrees that it will not supply Supplemental Water on a wholesale basis to any third party entity where the wastewater derived from such Supplemental Water is discharged outside the Colorado River basin unless: (a) such transfer is authorized under state law; and (b) Austin includes in any contracts for new customers or any renewed contracts for entities that are existing customers on the Effective Date of the SWSA language giving LCRA the right to retrieve and return to the Colorado River basin, at its own expense, any Return Flows attributed to such transferred water.

c. Retail customers

In the event that the Return Flows derived from the Supplemental Water used by Austin to serve retail customers located outside the Colorado River basin but within its Service Area will not be reused by Austin for its own purposes within that portion of Austin's Service Area located outside of the Colorado River and will not be discharged by Austin into the Colorado River, Austin agrees that LCRA shall have the right, but not the obligation, to: i) enter, place facilities within, and collect from Austin's facilities such Return Flows, and ii) make use of such Return Flows as may be permitted under any existing or future water rights granted by the TCEQ. In the event LCRA exercises its rights under this section, then:

- (i) Austin shall provide to LCRA, at no charge or cost to LCRA, any easements reasonably necessary for LCRA to locate any collection facilities for such Return Flows within Austin's facilities;
- (ii) LCRA shall submit to Austin plans for any collection facilities to be located within Austin's facilities to collect such Return Flows from Austin's facilities in advance of construction thereof; and
- (iii) Austin agrees to not oppose any permit application submitted by LCRA to the TCEQ related to use of the wastewater.

d. Interruptible Indirect Reuse of Return Flows returned to basin.

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Return Flows returned to the Colorado River basin through the efforts of LCRA as contemplated under subsections (b) and (c) are not eligible for any credit for Interruptible Indirect Reuse by Austin unless the Return Flows are made available to Austin and Austin pays for such supply under this SWSA as Supplemental Water either from LCRA's Raw Water System or as a New LCRA Water Supply.

3.10. REQUIRED NOTICES.

3.10.1. Austin Notices

3.10.1.1. Austin shall notify LCRA in writing of its intention to use water from any Supply Increment (or portion thereof) under this SWSA not more than six months, nor less than two months, prior to Austin's initiation of use, which such use shall not commence except in accordance with Section 3.3 above, or on a schedule that the Parties mutually agree will allow for the orderly and efficient implementation of all actions by either Party necessary to implement such use.

3.10.1.2. For any Diversion Point located downstream of Lake Travis from which Austin intends to divert water, Austin shall notify LCRA's River Operations Center prior to making any diversion under this SWSA to ensure that LCRA timely releases any necessary water from storage or otherwise conveys water downstream that may be used to honor LCRA's commitment under this SWSA.

3.10.1.3. If, at any time after the Effective Date of this SWSA, Austin staff has determined the need to acquire or develop a New Austin Water Supply, then Austin shall notify LCRA of such determination at the next regularly scheduled meeting of the Water Partnership unless approval regarding the acquisition or development of a New Austin Water Supply will be sought from the Austin City Council or its delegated authority prior to such meeting, in which case Austin shall give notice to LCRA at least thirty (30) days prior to seeking any such approvals, or as soon as is reasonably practicable.

3.10.2. LCRA Notice of Potential LCRA Water Supply

If, at any time after the Effective Date of this SWSA, LCRA is requested by a third party to acquire or develop a Potential LCRA Water Supply on its behalf, and such request is not considered confidential by law, or LCRA staff independently determines the need to acquire or develop a Potential LCRA Water Supply to meet needs of other LCRA Raw Water System customers, then LCRA shall notify Austin of such request or staff determination at the next regularly scheduled meeting of the Water Partnership unless approval(s) regarding the acquisition or development of a Potential LCRA Water Supply will be sought from the LCRA Board or its delegated authority prior to such meeting, in

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which case LCRA shall give notice to Austin at least thirty (30) days prior to seeking any such approvals , or as soon as is reasonably practicable.

**3.11. AVAILABILITY OF WATER IMPACTED BY OPERATION,
DROUGHT, FLOOD, OR OTHER CAUSES**

3.11.1. Lakes Buchanan and Travis

To the extent that Supplemental Water is to be provided from Lakes Buchanan or Travis, and notwithstanding any other provisions herein, LCRA does not represent or warrant that water will be available at any particular time or place or that Lakes Buchanan and Travis will be retained at any specific level at any particular time. It is fully understood by the Parties hereto that the level of said lakes will vary as a result of LCRA's operation of its dams on the Colorado River or other natural or manmade causes (such as weather or climate change).

3.11.2. Curtailment During Shortage of Supply

Austin acknowledges and understands that the Supplemental Water made available by LCRA is subject to applicable laws respecting the distribution and allocation of water during shortages of supply.

3.12. DIVERSION, TRANSPORTION AND TREATMENT FACILITIES

Unless the Parties otherwise agree in writing, all diversion facilities, pipelines, pumps, and other transportation or treatment facilities used for purposes of diverting and transporting the water from the Delivery Point and for treatment and distribution of water to and within Austin's Service Area shall be installed, operated and maintained by Austin at Austin's sole expense and risk. Where appropriate and available, the Water Partnership shall seek opportunities for Austin to partner with other LCRA customers and other third parties that may reduce the costs of such facilities.

3.13. QUALITY

For Supplemental Water derived from the Colorado River portion of LCRA's Raw Water System, LCRA makes no representation as to the quality of the Supplemental Water made available under this SWSA, and Austin hereby releases LCRA and agrees to hold it harmless from any and all claims that Austin or Austin's customers or users have or may have against LCRA for any diminution or impairment of the quality of water made available under this SWSA.

For Supplemental Water not derived from the Colorado River portion of LCRA's Raw Water System, the Water Partnership shall address any potential water quality issues, including but not limited to, compatibility with Austin's water treatment system, as part of its recommended Supply Decision.

3.14. REGULATORY APPROVALS REQUIRED

(1) Austin acknowledges and agrees that the Supplemental Water LCRA makes available under this SWSA may be regulated in whole or in part by the State of Texas or local regulatory authorities, including but not limited to periodic review and amendment of the LCRA's Water Management Plan by the TCEQ. LCRA and Austin acknowledge and agree that LCRA shall be obligated to exercise due diligence to manage its water supplies within such regulatory regimes to make Supplemental Water available to Austin in accordance with the terms of this SWSA. Austin acknowledges and agrees, however, that LCRA's obligations under this SWSA may be affected by orders of the State of Texas, its agencies or local regulatory authorities and that the water to be supplied by LCRA under this SWSA may be subject to interruption, limitation, or curtailment in accordance with such orders or regulatory requirements. Orders of the State of Texas, its agencies or local regulatory authorities may constitute a "force majeure" event in accordance with Section 3.17 of this SWSA.

(2) LCRA's commitment to supply Supplemental Water shall be conditioned upon LCRA and Austin obtaining and maintaining in good standing any and all regulatory and statutory authorizations, if any, that may be needed to allow LCRA to provide the Supplemental Water from any and all supplies the Water Partnership has identified as appropriate supply alternatives, including but not limited to appropriate authorizations needed to implement Section 3.8 of this SWSA (if any), new permits, or amendments to LCRA's Existing Water Rights or Austin's Existing Water Rights. The Water Partnership shall develop a plan for the Parties to coordinate as necessary on this activity and to obtain such authorizations, provided those authorizations shall not injure either Austin's or LCRA's Existing Water Rights or contravene the 2007 Settlement Agreement. The Parties hereby agree to cooperate and support each others' efforts as may be necessary to implement such plan.

(3) If the Parties fail to obtain the required regulatory approvals, both Parties will use their best efforts to take any necessary actions to otherwise implement the terms of the SWSA.

3.15. WATER CONSERVATION AND DROUGHT CONTINGENCY PLANS

(1) Prior to using any water to be supplied under this SWSA, Austin shall submit for review and approval by LCRA a water conservation plan and drought contingency plan that comply with any and all requirements of LCRA's rules and regulations in existence at such time and any other regulations regarding water conservation or drought contingency planning that apply to the use of the water to be provided under this SWSA. Austin further agrees that the water used pursuant to this SWSA will be used in accordance with such approved plans and that such approved plans shall thereafter be incorporated into this SWSA as if set forth fully herein.

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(2) Austin acknowledges that LCRA, in accordance with applicable law, may require Austin to revise or update its plans on a periodic basis or in specific response to changes to LCRA's own rules and regulations or state law relating to water conservation measures and drought contingency planning. Austin agrees to amend its plans in accordance with such rules or regulations, as necessary, within the reasonable timeframes to be determined by LCRA.

(3) In the event that Austin agrees to furnish water or water services to a third party, who in turn will furnish the water or water services to an ultimate consumer, Austin agrees to include in its agreement with the third party provisions that obligate the third party to: a) develop and implement a water conservation program and drought contingency plan consistent with Austin's approved plans; and, b) amend its water conservation program and drought contingency plan to reflect amendments in state law, regulations or LCRA's rules and regulations within the same timelines that apply to Austin.

3.16. FUTURE REGULATIONS.

Austin agrees to comply with LCRA rules and any legal requirements applicable to raw water contracts that may be in effect when and after Austin begins to use water under the SWSA, including but not limited to any water conservation and drought contingency measures that may be required. The Parties agree and understand that LCRA will not enact regulations with the specific intent of imposing requirements on Austin that are more onerous than those imposed on its other customers unless LCRA is otherwise required to adopt such regulations by local, state, or federal law.

3.17. FORCE MAJEURE.

The term "Force Majeure" as used herein, shall mean those situations or conditions that are beyond the control of LCRA or Austin and that, after the exercise of due diligence to remedy such situation or condition, render LCRA or Austin unable, wholly or in part, to carry out the covenants contained herein. Such force majeure includes, but is not limited to acts of God, strikes, lockouts, acts of the public enemy, orders of any kind of the government or agencies of the United States or of the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or dams, partial or entire failure of water supply insofar as each of the foregoing are beyond the reasonable control of the party in question. LCRA shall not be held liable or responsible for any damage that may be caused by its inability, after the exercise of due diligence, to make the supply of water available to Austin due to any force majeure. LCRA shall use reasonable and timely diligence to repair or recondition LCRA's machinery, canals, or dams in the event such machinery, canals or dams are damaged or made unserviceable from any force majeure.

4. CONTRACT ADMINISTRATION

4.1. TERM OF CONTRACT.

This SWSA shall commence on the Effective Date, and end on December 31, 2100, unless terminated earlier by either party as provided below.

4.2. METHOD OF BILLING AND PAYMENT.

For each Supply Increment (or portion thereof), calculation of payments due and billing shall occur in accordance with the standard practices used by LCRA at the time the Supply Decision is made or in any other manner that is mutually agreed upon by the Parties to ensure that all of LCRA's reasonable and necessary costs are recovered as determined by Section 3.7 of this SWSA.

Austin understands and acknowledges that the standard rates, fees, and charges collected by LCRA for raw water provided from the LCRA system are set by LCRA Board of Directors, and that the Board may change such rates, fees and charges, or the underlying methodologies for determining them, under the SWSA from time to time.

4.3. MEASURING WATER.

For each Supply Increment (or portion thereof), the quantity of water used by Austin shall be measured by Austin using a measuring and recording devices or methods as are approved by LCRA (the "Meter") that complies with any applicable LCRA rule, or other applicable state law or regulation in effect at the time such use occurs. Such Meter shall be installed at Austin's expense. LCRA shall have the right to approve both the design of the Meter as well as the location of its installation. The Parties further agree to comply with all other standard requirements related to Meters that are required by LCRA rules or Board policy, or other local, state or federal laws or rules that are in effect at the time Supplemental Water is used under this SWSA, including but not limited provisions related to repair, replacement, testing, and inspection of Meters.

4.4. TERMINATION OF CONTRACT.

4.4.1. Termination After Supply Decision

4.4.1.1. As part of its recommended Supply Decision, the Water Partnership shall develop conditions under which termination of the Parties' obligations regarding a particular Supply Increment may occur, which conditions shall address, at minimum, appropriate mechanisms for cost recovery upon termination, and noncompliance with regulatory requirements related to the use or supply of the Supplemental Water

4.4.1.2. In the event TCEQ, other applicable regulatory body, or court of law

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denies or terminates for any reason a permit required to supply a particular Supply Increment under this SWSA, LCRA's obligation to provide such Supply Increment under this SWSA shall be suspended until such date as the TCEQ action is final and nonappealable and shall terminate thereafter without further action by either party, and shall be of no further force or effect.

4.4.1.3. Termination for nonpayment shall occur only in accordance with Section 4.5 of this SWSA.

4.4.1.4. Austin shall suspend all use of the Supplemental Water provided by LCRA for any Supply Increment that has been terminated under this SWSA immediately upon such termination. LCRA may exercise any rights that it may have at law or in equity to prevent unauthorized use of such Supplemental Water by Austin, including enforcement of any requirements of any water permit under which such use is being made.

4.4.2. Effect of Termination on 2007 Settlement Agreement

The 2007 Settlement Agreement shall remain effective notwithstanding the termination of this SWSA.

4.5. NON-PAYMENT.

(1) If LCRA determines that Austin has not paid the full amount owed for any payment due under Section 3.7 hereof within the time provided therefore, LCRA shall give written notice to Austin stating the amount LCRA has determined is due and unpaid. If LCRA gives notice as provided herein and Austin fails to pay within thirty (30) days the amounts claimed in such notice to be due and unpaid, LCRA may, at its sole option: (1) upon giving ten (10) days written notice to Austin terminate this SWSA without recourse; and/or, (2) request injunctive relief from a court of competent jurisdiction to prevent Austin from diverting additional water pursuant to this SWSA. Neither insolvency or bankruptcy shall excuse Austin from the obligation to pay amounts due under this SWSA.

(2) If Austin should dispute Austin's obligation to pay all or any part of the amount stated in any invoice or notice, Austin may, in addition to all other rights that Austin may have under law, pay such amount under protest in which case such amount shall be deposited by LCRA in an interest bearing account mutually acceptable to both LCRA and Austin pending final resolution of such dispute in accordance with Section 4.7. LCRA may not terminate this SWSA, or request injunctive relief to prevent additional diversions, for failure to pay the amount stated in any invoice or notice if Austin pays such amount under protest and until there is a final resolution of such dispute in accordance with Section 4.7 favorable to LCRA.

4.6. EQUITABLE REMEDIES.

Austin agrees that use of water by Austin without the authorization provided by this SWSA will result in damages to LCRA that cannot be adequately compensated by money alone. As a result, Austin agrees that LCRA shall have available to it equitable remedies, including injunctive relief against additional diversions or impoundments by Austin unless Austin demonstrates that it is otherwise authorized to divert or impound water. In addition, Austin agrees that the provisions of Section 4.7, will not apply to any legal action brought by LCRA seeking equitable remedies under this SWSA except as expressly provided by Section 4.5 regarding "NON-PAYMENT."

4.7. DISPUTE RESOLUTION.

4.7.1. Settlement By Mutual Agreement.

In the event any dispute, controversy or claim between or among the Parties arises under this SWSA or is connected with or related in any way to this SWSA or any right, duty or obligation arising hereunder or the relationship of the Parties hereunder (a "Dispute or Controversy"), including, but not limited to, a Dispute or Controversy relating to the validity, interpretation, implementation, termination, cancellation or enforcement of this SWSA, the Parties shall first attempt in good faith to settle and resolve such Dispute or Controversy by mutual agreement in accordance with the terms of this subsection (1). In the event a Dispute or Controversy arises, any party shall have the right to notify the other party to such Dispute or Controversy that it has elected to implement the procedures set forth in this subsection (1). Within fifteen (15) days after delivery of any such notice by one party to the other regarding a Dispute or Controversy, the designated representatives of the Parties shall meet at a mutually agreed time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should a mutual resolution and settlement not be obtained at the meeting of the Parties' designated representatives for such purpose or should no such meeting take place within such fifteen (15) day period, then any party may by notice to the other party, as the case may be, refer the Dispute or Controversy to the Executive Management Committee of the Water Partnership for resolution. Within fifteen (15) days after delivery of any such notice by one party to the other referring such Dispute or Controversy to the Executive Management Committee of the Water Partnership for resolution, the Executive Management Committee of the Water Partnership shall meet at a mutually agreed upon time and place to attempt, with diligence and good faith, to resolve and settle such Dispute or Controversy. Should mutual resolution and settlement not be obtained at the meeting of the Executive Management Committee of the Water Partnership or should no such meeting take place within such fifteen (15) day period (unless extended by mutual agreement), then any party may by notice to the other party, as the case may seek any other remedy available in law or equity.

4.7.2. Emergency Relief.

Notwithstanding the Parties' agreement to resolve a Dispute or Controversy in accordance with the provisions set forth in Section 4.7.1 above, either party may seek injunctive relief or other form of emergency relief at any time from any state court of competent jurisdiction in Austin, Texas, the federal court for such district, or any state or federal regulatory agency of competent jurisdiction.

4.7.3. Survival.

The provisions of Section 4.7 shall survive expiration or earlier termination of this SWSA.

4.8. NOTICE. Any notices under this SWSA may be delivered by facsimile transmission or by certified mail, return receipt requested. If delivered by facsimile transmission, notice shall be effective upon receipt. If delivered by certified mail, return receipt requested, notice shall be deemed effective five (5) days after the date on which the notice is post-marked.

All notices and invoices to Austin shall be addressed to:

1. The first step in the process of identifying a problem is to recognize that a problem exists. This involves gathering information about the situation and identifying the specific issue that needs to be addressed. Once the problem is identified, the next step is to define the problem clearly and concisely. This involves stating the problem in a way that is specific and measurable, and identifying the goals that need to be achieved to solve the problem. The third step is to generate potential solutions. This involves brainstorming ideas and considering different approaches to solving the problem. The fourth step is to evaluate the potential solutions. This involves comparing the different solutions and determining which one is the most effective and feasible. The final step is to implement the chosen solution. This involves putting the solution into action and monitoring the results to ensure that the problem is solved.

and all notices and payment to LCRA shall be addressed to:

Lower Colorado River Authority
Attn: Executive Manager, River Services
P.O. Box 220
Austin, Texas 78767
(512) _____ for facsimile transmission

And

Lower Colorado River Authority
Attn: Manager, River Operations Center
P.O. Box 220
Austin, Texas 78767
(512) for facsimile transmission

Either party may change its address by giving written notice of such change to the other party.

4.9. ASSIGNMENT OF CONTRACT. Austin may not assign this SWSA.

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4.10. COMPLIANCE WITH FILING REQUIREMENTS. LCRA agrees to file a copy of this SWSA with the Executive Director of the TCEQ, P.O. Box 13087, Capitol Station, Austin, Texas 78711, it being fully recognized by Austin hereunder that the effectiveness of this SWSA is dependent upon compliance with the substantive rules and procedural rules for water rights of the TCEQ.

4.11. ACTUAL DAMAGES. NEITHER PARTY SHALL BE LIABLE OR HAVE ANY RESPONSIBILITY TO THE OTHER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR DELAY-RELATED OR PERFORMANCE-RELATED DAMAGES INCLUDING, WITHOUT LIMITATION, LOST EARNINGS OR PROFITS. SUCH LIMITATION ON LIABILITY SHALL APPLY TO ANY CLAIM OR ACTION, WHETHER IT IS BASED IN WHOLE OR IN PART ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, STATUTE OR ANY OTHER THEORY OF LIABILITY. The provisions of this Section shall have no effect on the party's indemnity obligations under Section 4.12.

4.12. INDEMNITY

(1) To the extent authorized by law, Austin will indemnify and save LCRA harmless from any and all claims and demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damage to any property resulting from any and all actions and activities (or failure to act) of Austin under this contract except to the extent caused by LCRA's gross negligence or willful misconduct. Austin's pumping and related facilities shall be installed, operated and maintained by Austin at Austin's sole risk and expense. Nothing in this contract shall be construed as authorizing Austin, or recognizing that Austin has any rights, to install any equipment or improvements on property owned by LCRA or third parties.

(2) To the extent authorized by law, LCRA will save Austin harmless from any and all claims or demands whatsoever to which LCRA may be subjected by reason of any injury to any person or damages to any property resulting from or in any way connected with any and all actions and activities (or failure to act) of LCRA under this contract.

4.13. AMENDMENT. This SWSA may not be modified or amended except by an instrument in writing signed by authorized representatives of the Parties.

4.14. BINDING EFFECT. The terms of this SWSA shall be binding upon, and inure to the benefit of, the Parties and their permitted successors and assigns.

4.15. COMPLETE CONTRACT. This SWSA, together with all Exhibits attached hereto, constitutes the entire agreement of the Parties relating to the Supplemental Water to be provided under this SWSA and supersedes all prior contracts, agreements or understandings with respect to such Supplemental Water, both oral or written, except to the extent such agreements are specifically referenced herein. The Parties agree that

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Section IV.B of the 2007 Settlement Agreement related to the negotiation and terms of a supplemental water supply agreement is hereby superseded by this SWSA.

Each party agrees that the other party (and its agents and representatives) has not made, and has not relied upon, any representation, warranty, covenant or agreement relating to the transactions contemplated hereunder other than those expressly set forth herein.

4.16. EXISTING WATER SALE AGREEMENTS

Nothing in this SWSA is intended to modify or amend any portion of the Existing Water Sale Agreements and such agreements remain in full force and effect, except as clarified by the 2007 Settlement Agreement.

4.17. COUNTERPARTS. This SWSA may be executed by the Parties in any number of separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. All signatures need not be on the same counterpart.

4.18. FURTHER ASSURANCES. Each party agrees to do all acts and things and to execute and deliver such further written instruments, as may be from time to time reasonably required to carry out the terms and provisions of this SWSA.

4.19. GOVERNING LAW. This SWSA and the rights and duties of the Parties arising out of this SWSA shall be governed by, and construed in accordance with, the laws of the State of Texas, without reference to the conflict of laws rules thereof.

4.20. HEADINGS; TABLE OF CONTENTS. The headings of the Articles and Sections of this SWSA and the Table of Contents are included for convenience only and shall not be deemed to constitute a part of this SWSA.

4.21. INCORPORATION OF EXHIBITS. All Exhibits attached to this SWSA are incorporated herein by this reference in their entirety and made a part hereof for all purposes.

4.22. INTERPRETATION AND RELIANCE. No presumption will apply in favor of any party in the interpretation of this SWSA or in the resolution of any ambiguity of any provisions thereof.

4.23. RELATIONSHIP OF PARTIES. This SWSA and the transactions contemplated hereunder are based upon the active participation of all Parties.

Neither the execution nor delivery of this SWSA, nor the consummation of the transactions contemplated hereunder, shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement between the Parties, except for the contractual arrangements specifically set forth in this SWSA. Except as is expressly agreed to in writing in this SWSA, no party (or any of its agents, officers or

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employees) shall be an agent or employee of the other party, nor shall a party (or any of its agents, officers or employees) have any power to assume or create any obligation on behalf of the other party. Nothing contained in this SWSA shall create or constitute a partnership, joint venture, or any other form of business organization or arrangement among LCRA on the one hand and the Austin on the other hand, except for the contractual arrangements specifically set forth herein.

4.24. SEVERABILITY. In the event that any provision of this SWSA is held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment to the provisions of this SWSA with the view to effecting, to the extent possible, the original purpose and intent of this SWSA, and the validity and enforceability of the remaining provisions shall not be affected thereby.

4.25. NO ADDITIONAL WAIVER IMPLIED. No waiver or waivers of any breach or default (or any breaches or defaults) of any term, covenant, condition or liability under this SWSA, or of performance by the other parties of any duty or obligation under this SWSA, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

4.26. EFFECTIVE DATE

This SWSA shall be effective only when signed by both Parties. The Effective Date of this SWSA shall be the latest date on which Austin or LCRA has signed the SWSA.

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CITY OF AUSTIN

By: _____
Toby Hammett Futrell
City Manager

Date: _____

Attest: _____

Secretary: _____

LOWER COLORADO RIVER AUTHORITY

By: _____
Joseph J. Beal, P.E.
General Manager

Date: _____

Attest: _____

Secretary: _____

Hand out
10/17/2007
6:00pm



October 17, 2007

Hon. Will Wynn, Mayor
& Members of the City Council
City of Austin
Austin, Texas

RE: Proposed Austin and LCRA Supplemental Water Supply Agreement

Dear Mayor Wynn and Members of Council:

As proposed, the Supplemental Water Supply Agreement (and the Settlement Agreement it confirms) between the City and LCRA should be set aside in favor of a public planning process that emphasizes water conservation, transparency, and serving Austin residents. As written, the combined agreements promote secrecy, exclude any commitment to conservation, and pledge Austin to serving the best interests of LCRA and "all" of its customers at the expense of Austin and its water customers.

Save Our Springs Alliance respectfully requests that the City Council consider the following points and reject the proposed Supplemental Water Supply Agreement ("SWSA" or "Agreement") and the June 2007 Settlement Agreement that it would confirm. Alternatively, we urge several changes to the proposed Agreement.

On the process:

As a preliminary, but important, matter, we object to the process in which the proposed Agreement was drafted – behind closed doors and without any public participation. The same is true of the June 18th, 2007 "Settlement Agreement," which the proposed SWSA would supplement and finalize as a binding agreement.

City representatives have defended this approach under the rubric of settling legal disputes between the City and LCRA. However, the proposed terms contained in the two agreements go far beyond the scope of the legal disagreements between the City and LCRA. The net result is that our City Manager and Council have set a wide range of water planning policy for the next 93 years with essentially no public or board and commission participation. There is no pending emergency or other reason that justifies

rushing ahead with the combined seventy-seven (77) pages of agreement subject only to after-the-fact comment by citizens and boards and commissions.

The process has, instead, installed LCRA as Austin's water master while excluding the public. Water planning, much less long term water planning, should not be merged with legal dispute resolution so as to short circuit a meaningful public planning process.

Thus our first request is that the council separate the legal dispute resolution terms from the planning terms, and start anew with a public water planning process that would engage the relevant boards and commissions on a timeframe that facilitates thorough analysis and input, includes interested members of the public, and works along with a regional hill country land and water conservation planning process.

On the Water Partnership:

A. On the Austin/LCRA Joint Venture: Next, we request that the proposed "Water Partnership" between the City and LCRA be removed from the agreement. Alternatively, we ask that language be removed and/or added to the agreement to make explicit that the City (a) is in no way giving up its right to object to future LCRA water sales, especially large sales in the Hill Country and/or outside the Colorado River Basin; and (b) is not agreeing to assist or cooperate with LCRA in delivering raw or treated water into the Hill Country.

As written (and as would be confirmed by approval of the SWSA), the Settlement Agreement provides for a new "Water Partnership" that "will jointly evaluate and implement strategies to optimize water supplies to meet the long-term water needs of all of their customers and the environment." At p. 13, IV(A)(1). Further, the Settlement Agreement goes on to commit the City and LCRA to "joint water supply planning and management of both entities' individual raw water supplies as an integrated system, including all existing raw surface water supplies, . . ." At p. 13, IV(A)(2).

Austin is a home rule city with a duty to serve its residents and immediately surrounding areas that may become a part of the City in the future (or which the City has determined is appropriate to serve as part of its municipal water system). The City is not a regional water supply provider. It simply has no business becoming a full fledged partner in LCRA's regional water utility. This is especially true when we know from past and current practices that LCRA's willingness to sell water to any and everyone is in direct contradiction to the City of Austin's Austin Tomorrow Comprehensive Plan, which calls for managing growth in a way that minimizes urban sprawl into the Hill Country.

The City's outside attorney argues that the Settlement Agreement does **not** commit the City to assisting LCRA in serving sprawling Hill Country development (or, for example, shipping water to San Antonio). Further he argues that it does **not** limit the City's right to object at the Texas Legislature or elsewhere if LCRA proposes selling yet

more water into the Hill Country or to ship water to San Antonio via a Hill Country pipeline.

But the plain language of Section IV of the Settlement Agreement suggests otherwise: Austin would be committed to “implement strategies” to meet the water needs of “all” of LCRA’s customers and to “joint management” of its raw water supplies as “an integrated system” with LCRA’s system.

The above-quoted language should be deleted or the following language added: “Nothing in this Section IV or other sections of the Settlement Agreement shall be construed to commit the City to assist LCRA in delivering water to its customers or to limit the City’s right to object at the Texas Legislature or elsewhere if LCRA proposes selling water to persons or entities or under terms that the City, in its sole discretion, determines may be contrary to the best interests of the City.”

B. On the Operations of the Water Partnership: Exhibit A to the Settlement Agreement sets out how the proposed “Water Partnership” will be managed by an “Executive Management Committee,” a supporting “Technical Water Resource Planning Subcommittee,” and the potential for other supporting committees. Yet no where do the documents commit these committees to operating in the public with prior public notice of their meetings. The agreements should be amended to state specifically that the Water Partnership committee meetings will be open to the public and subject to the notice provisions of the Texas Open Meetings Act.

Absence such change, the agreements basically commit Austin to continued secret water planning, only with LCRA setting the agenda for the Austin water utility rather than the concerned citizens, voters, ratepayers and elected officials of Austin.

C. On Water Conservation: Investing in water conservation and (direct) reuse should be the City’s top priority. By investing in water conservation, Austin can accommodate growth without increasing water consumption. Such a commitment would allow us to avoid the need for building a new water treatment plant for 20 years or more, saving Austin ratepayers hundreds of millions of dollars.

Yet the proposed agreements say almost nothing about conservation. The only provision of note simply commits Austin to the minimum standards LCRA sets for its water customers. At minimum, the agreements should be amended to commit both LCRA and the City to meeting the goal set out in the approved state and regional water plan for municipal uses: that total per capita consumption will be reduced by at least one percent per year until a rate of 140 gallons per capita per day or less is achieved.

C. On Regional Planning: We request the City refrain from entering any kind of partnership or withdrawing its opposition to LCRA’s request at the TCEQ to add the Highland Lakes as points of diversion for LCRA’s Garwood Irrigation District water until LCRA agrees to freeze extensions of water lines into the Hill Country pending the completion of a regional Hill Country land and water conservation plan. Such a plan

would engage all of the counties and communities who are directly affected, both positively and negatively, by LCRA's delivery of water. Such a plan would also evaluate the economic benefits of protecting water quality and water levels in Lake Travis.

In the past, Austin has served as an important check on LCRA's otherwise near-total control over water policy for the Colorado Basin. As written, the Water Partnership would have Austin become a willing and knowing accomplice in LCRA's rush to provide plumbing for the endless cutting up and paving over of the Hill Country and beyond. As written, the agreements have Austin making an unqualified pledge to help serve "all" of LCRA's customers and to operate our water supplies as "integrated systems" with LCRA's supplies. This is so even when doing so would harm Austin's best interests.

Rather than become a partner in LCRA's assault on the Hill Country and the Lower Colorado, Austin should become a more energetic champion of slowing down LCRA and preserving the Hill Country, the river, and the wildlife and rural communities of the Colorado Basin.

Sincerely,

Bill Bunch



Resource Management Commission
Lower Colorado River Authority and City of Austin
June 18, 2007 Settlement Agreement and
Supplemental Water Supply Agreement
Policy Advice
October 16, 2007
Vote: 6-0-2-0-1

Hand out
Rec'd
10/17/2007
6:00pm

Motion by: A. Martinez

Second by: A. Donoho

For: R. Amato, C. Herbert, J. Beckage, G. Hsieh

Against: 0

Absent: L. Cunningham, K. Strnad

Abstain: 0

Vacant: C. Barron

Motion: Passed

WHEREAS the City of Austin (City) and the Lower Colorado River Authority (LCRA) have entered into a Settlement Agreement on June 18, 2007 and a Supplemental Water Supply Agreement (SWSA), which is currently under review,—both of which much be approved for either to be valid; and

WHEREAS the Resource Management Commission (RMC) has been analyzing the interplay of the Settlement and SWSA, particularly with respect to water conservation issues; and

WHEREAS as a result of the analysis, two major issues were discovered: 1) that the proposed Water Partnership set out in the SWSA did not expressly provide for public participation; 2) that water conservation standards were not expressly made prerequisite to either the City's or LCRA's interconnection rules; and

WHEREAS the scope of the Settlement and SWSA is unclear with respect to the City's ability to object to present and future supply decisions that are not the subject of the Settlement, and;

WHEREAS due to the process for reaching this agreement between the City and LCRA, the timeline for comment for boards and commissions requires that we comment now, in spite of the fact that this is to be adopted almost immediately; and

WHEREAS the RMC requests, and the City and LCRA commit, to have that language outlining the premises and recommendations in this resolution be explicit in the agreement and be hereby incorporated into the SWSA, to protect the future water supply for Austin, beyond 2050;

THEREFORE, BE IT RESOLVED that the Resource Management Commission recommends that the City Council authorize the City Manager to negotiate and execute the SWSA with LCRA to include the following recommendations:

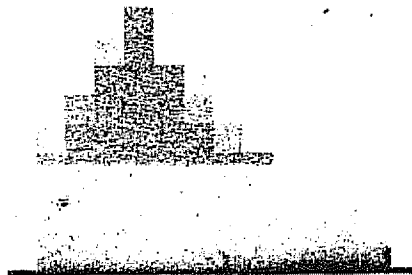
1. To ensure that appropriate stakeholder input is considered as part of the Water Partnership's water supply strategy evaluation, as contemplated by Section 5.C(ii)(3) of the Water Partnership framework set forth in Exhibit A of the Settlement Agreement, the Water Partnership shall establish a process to include public input as part of the Supply Decision and Source of Supply components of the Supplemental Water Supply Agreement (SWSA), as contemplated by Section 3.4 of the SWSA. The Water Partnership shall also provide annual updates to the Region K Water Planning Group regarding these components as part of this process.
2. LCRA shall seek and consider, and the City shall actively encourage, public input as part of its ongoing Water Supply Resource Planning effort, especially the conservation component of this effort and its evaluation of and recommendations regarding water conservation strategies.
3. Consistent with the Parties' stated mutual interests of identifying water supply strategies that demonstrate "responsible water resource management, mindful of the Parties' commitment to a strong water conservation ethic," as stated in Section 5.C(iii)(5) of the Water Partnership framework set forth in Exhibit A of the Settlement Agreement, the Water Partnership shall evaluate the water conservation strategies that may affect the timing and magnitude of Supply Decisions made by the Parties under the SWSA. Further, the Water Partnership shall establish a process, to include stakeholder input, for considering various water conservation strategies that are or may be available to LCRA or Austin, or both, and their customers.
4. In its evaluation, the Water Partnership shall use, to the maximum extent possible, existing mechanisms and information and results from ongoing efforts by the City, LCRA and others, such as those of the City of Austin's Citizens' Water Conservation Committee, the LCRA's Water Supply Resource Plan, and Texas' Water Conservation Advisory Council, to collect and assess relevant water use and water conservation information.

5. On or before the date on which Austin develops its first Demand Projection under the Supplemental Water Supply Agreement, the Water Partnership (or a subcommittee thereof) shall report to the Parties' respective governing bodies on its efforts to evaluate and consider water conservation strategies, and shall include a summary of its findings, as well as any appropriate water conservation strategies to meet the Parties' goals for water use reduction considering the Parties' diverse customer base, and any related matters for further study or action. Austin's current goal is to reduce peak day usage by one percent per year for 10 years, LCRA's wholesale raw water supply goal is to decrease per-capita water use by 5% by the year 2015, and the Texas state goal is to achieve 140 gallons per capita per day.
6. The Supplemental Water Supply Agreement shall clearly state that: (a) the Supplemental Water Supply Agreement retains the Parties' independent rights to refuse to approve a particular recommendation from the Water Partnership for a Supply Decision; and (b) the Parties have retained any and all rights to contest or object to water rights permit requests or other regulatory approvals sought by either party in the future related to water supply except to the extent that those water rights permits applications are expressly addressed by the 2007 Settlement Agreement or are otherwise required to implement a Supply Decision that is adopted by the Parties under the Supplemental Water Supply Agreement.



Approved, Adán Martínez, Chair

October 16, 2007





ENVIRONMENTAL BOARD MOTION 101707-001

Date: October 17, 2007

Subject: Supplemental Water Supply Agreement between the City of Austin and the Lower Colorado River Authority

Motioned By: Dave Anderson, PE, CFM

Seconded By: John Dupnik, PG

Recommendation

The Environmental Board offers the attached resolution in response to the Supplemental Water Supply Agreement between the City of Austin and the Lower Colorado River Authority (LCRA) to increase the firm water available to Austin by an additional 250,000 acre-feet/year through the year 2100 pursuant to the Settlement Agreement executed on June 18, 2007 between the City and LCRA.

Staff Conditions

Not Applicable.

Rationale

Not Applicable.

Vote 5-0-0-2

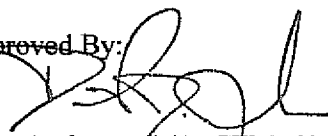
For: Dupnik, Maxwell, Anderson, Neely, Moncada

Against: None

Abstain: None

Absent: Ahart, Beall

Approved By:


Dave Anderson P.E., CFM, Chair

RESOLUTION NO. EB 101707-001

WHEREAS the City of Austin (City) and the Lower Colorado River Authority (LCRA) entered into a Settlement Agreement on June 18, 2007 and a Supplemental Water Supply Agreement (SWSA) is under consideration—both of which much be approved by both entities for either to be valid; and

WHEREAS the Environmental Board is aware of the investments that LCRA has made to protect water quality in the Highland Lakes – the water supply for 1 million Central Texans - and the lower Colorado River basin, including the Highland Lakes Watershed Ordinance (requiring construction projects to meet performance-based standards related to removal of pollutants from stormwater in the watersheds contributing flows to the Highland Lakes), the management of more than 23,000 on-site sewage facilities in an area around the Highland Lakes, and coordination with the Texas Commission on Environmental Quality on their ban of pollutant discharges into the Highland Lakes since 1986; and

WHEREAS the LCRA also provides education opportunities related to natural resources at six nature parks and natural science centers where more than 50,000 kids have been introduced to the lower Colorado River through classes, camps and teacher workshops, and that the LCRA regularly solicits input from customers and stakeholders on its water quality programs through numerous public processes; and

WHEREAS the LCRA has undertaken the Colorado River Environmental Model (CREMS) Project, a 10-year project to develop environmental models capable of assessing water quality, performing environmental analyses and evaluating the affects of water quality ordinances; and that LCRA professionals and more than 100 citizen monitors collect water quality data throughout the lower Colorado River basin that is used to publish LCRA's Water Quality Index to inform and educate the public about general water quality conditions along the Highland Lakes, Colorado River and major tributaries; and

WHEREAS the LCRA has collaborated with partner agencies through the Clean Rivers Program that has also resulted in a water quality database that includes information from more than 200 sites; and

WHEREAS the City of Austin Environmental Board recommended support for the Settlement Agreement, and despite of LCRA's water quality programs, they are primarily focused on inflows into the Highland Lakes, and the Board is concerned about the impacts of the Supplement Water Supply Agreement on the natural environment in and around Austin, including the instream flows and bay and

estuary inflows that might be impacted by either Agreement, as well as the impact of LCRA water supplies to customers in the LCRA service area that provide water for development upstream of receiving waters and watersheds that lie within the City of Austin's jurisdiction that could negatively impact creeks, streams, springs, and the general watershed health of the City's natural resources; and

WHEREAS the City of Austin has the responsibility to provide input on any water supply increments provided by LCRA if the City feels that it may cause elevated City of Austin water treatment costs, elevated maintenance and repair costs due to stream erosion or flooding within the City's jurisdiction, environmental harm to the creeks, streams, springs, or flora and fauna of the watersheds impacted by the water supply increment, or if the water supply increment does not match the intent of the Envision Central Texas program; and

WHEREAS the proposed Water Partnership set out in the Supplement Water Supply Agreement does not expressly provide for public participation, and the decisions made by the City of Austin and LCRA jointly through the Water Partnership on incremental water supplies should be open to a public stakeholder process in which those citizens potentially impacted by water supply decisions have an opportunity to voice their opinions on the validity of such an incremental water supply; and

WHEREAS water conservation standards were not expressly made prerequisite to either the City's or LCRA's interconnection rules; and

WHEREAS the scope of the Settlement and SWSA is unclear with respect to the City's ability to object to present and future supply decisions that are not the subject of the Settlement, and;

WHEREAS the City of Austin Environmental Board requests, and the City and LCRA commit to, having language that outlines the premises and recommendations in this resolution be explicit in the agreement and be hereby incorporated into the SWSA, to protect the natural environment in and around Austin through the end of this Agreement; **NOW THEREFORE**

BE IT RESOLVED BY THE CITY OF AUSTIN ENVIRONMENTAL BOARD, that the Board recommends that the City Council authorize the City Manager to negotiate and execute the SWSA with LCRA to include the following recommendations:

1. The recommendations of the Resource Management Commission should be accepted and explicitly addressed in the Supplemental Water Supply Agreement.

2. Consistent with the Parties' stated mutual interests to "preserv[e] water quality and environmental health of the river and bay system," as stated in Section 5.C(iii)(2) of the Water Partnership framework set forth in Exhibit A of the Settlement Agreement, the Water Partnership should establish a process for monitoring water quality of the springs, streams, and lakes within the City of Austin that receive runoff from areas served by LCRA and for considering water quality impacts, if any, of Supply Decisions evaluated by the Water Partnership.

3. The Water Partnership should establish a process, to include open meetings act notification and stakeholder input, for considering various strategies that may be available to address any adverse impacts that might be identified prior to those water supply decisions being made.

4. The Water Partnership should evaluate available regulatory tools, incentives, or other mechanisms and regional approaches that may be available to help safeguard against any water quality impacts of concern that the Water Partnership might identify.

5. For these purposes, the Water Partnership should use, to the maximum extent possible, existing mechanisms and information, such as the Clean Rivers Program, interlocal agreements regarding nonpoint source pollution prevention, existing studies, and ongoing water quality monitoring and modeling efforts, to collect and assess relevant water quality information.

6. The Water Partnership shall consider the Draught of Record and Draught Contingency Plans as they relate to incremental water supplies on or before the date on which the City of Austin develops its first Demand Projection under the Supplement Water Supply Agreement.

7. On or before the date on which Austin develops its first Demand Projection under the Supplemental Water Supply Agreement, the Water Partnership (or a subcommittee thereof) should report to the Parties' respective governing bodies on its efforts, and shall include a summary of its findings, as well as any recommendations for further study or action.

ADOPTED: October 17, 2007

ATTEST:



_____ p.c.

David J. Anderson, PE, CFM
Environmental Board Chair

CONSENT AGENDA ITEM CHECKLIST

- 1) staff recommendation
- 2) one-star green building
- 3) no increase in impervious cover (IC) or a reduction in IC than what is allowed by code/zoning
- 4) all minimum setbacks met for Critical Environmental Features (CEFs)
- 5) Integrated Pest Management (IPM) Plan
- 6) development proposed in the desired development zone (DDZ)
- 7) construction of a boat dock in critical water quality zone (CWQZ) if only variance requested
- 8) no opposition*

All would apply if applicable.

*Any board member can move to have an item bumped from the consent agenda if he/she wants a full presentation and board discussion on the dais.