

ORDINANCE NO.

AN ORDINANCE GRANTING VARIANCES TO ALLOW CONSTRUCTION OF INTERNAL HAUL ROADS IN THE CRITICAL WATER QUALITY ZONE BY TXI OPERATIONS, LP; ESTABLISHING CONDITIONS FOR THE VARIANCES; ESTABLISHING PROJECT REGULATIONS; AND PROVIDING EXPIRATION AND LIMITATIONS FOR THE VARIANCES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

The City Council finds that:

- (A) The properties located at 801-1019 Dunlap Road, 4501 N. Dunlap Road, and 18601 FM 969, subject to Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D, respectively, are currently legally permitted for the mining of sand and gravel by TXI Operations, LP ("TXI").
- (B) TXI will submit revisions to SP-99-0186D for sand and gravel mining on the properties described in the attached **EXHIBIT A** not later than 60 days after the effective date of this ordinance.
- (C) TXI and Travis County are negotiating a Development Agreement regarding the properties described above, the essential elements of which are:
 - (1) TXI will forego the use of Dunlap Road and Hunters Bend Road for the transportation of unprocessed mined materials.
 - (2) TXI will donate certain real property to Travis County for conservation as open space or parkland, and sell certain real property to Travis County to buffer neighborhoods from TXI operations.
 - (3) To buffer neighborhoods set forth in the agreement from TXI operations, TXI will agree to prohibit mining and industrial uses on property TXI owns now and property TXI may own in the future.
- (D) Three important components of the Agreement are:
 - (1) the ability of TXI to construct an internal haul road and/or conveyor to transport mined materials to its processing plant without using public roads, except for a single crossing of Dunlap Road; and
 - (2) the ability of TXI to continue its sand and gravel mining operations on the projects subject to Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D, and

- (3) the ability of TXI to conduct sand and gravel mining on the properties described in **EXHIBIT A** under the regulations in effect on January 29, 2010.
- (E) Construction of the internal haul road and/or conveyor requires variances from City environmental regulations.
- (F) The City is willing to grant the needed variances for the internal haul road and/or conveyor, subject to specific conditions to mitigate any environmental impact of the variances.
- (G) The City is willing to establish the regulations under which the properties subject to Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D and described in **EXHIBIT A** will continue to operate, and the regulations under which the properties described in **EXHIBIT A** will be reviewed, subject to specific conditions.

PART 2. VARIANCES.

- (A) The variances in this Subsection (A) apply to the construction of internal haul roads and/or conveyor and associated creek crossings on the properties subject to Site Plan Nos. SP2008-0513D, SP2008-0515D, and SP99-0186D. The variances are effective only after TXI has met all the conditions listed in Part 3 of this ordinance.

Subject to the conditions listed in Part 3 of this ordinance, variances are granted from:

- (1) City Code Section 25-8-341 (*Cut Requirements*), to allow cuts to exceed four feet but not to exceed ten feet for construction of the proposed internal haul road and/or conveyor and associated creek crossings;
- (2) City Code Section 25-8-342 (*Fill Requirements*), to allow fill to exceed four feet but not to exceed ten feet for construction of the proposed internal haul road and/or conveyor and associated creek crossings;
- (3) City Code Section 25-8-392 (*Critical Water Quality Zone*), to allow the proposed internal haul road and/or conveyor to cross Gilleland and Elm Creeks at the three locations shown in the attached **EXHIBIT B**; and

- (4) City Code Section 25-8-281 (*Critical Environmental Feature*) to allow a reduced setback for wetlands and wetland mitigation as established in this ordinance.
- (B) The variance in this Subsection (B) applies to internal haul roads and/or conveyor and associated creek crossings and the sand and gravel mining operations subject to Site Plan Nos. SP2008-0513D, SP2008-0515D, and SP99-0186D and to the sand and gravel mining operations on the properties described in **EXHIBIT A**. The variance is effective only after TXI has met all the conditions listed in Part 3 of this ordinance.

Subject to the conditions listed in Part 3 of this ordinance, a variance is granted from City Code Section 25-5-81 (*Site Plan Expiration*) to provide that the site plans subject to this ordinance expire only after the reclamation of all mined areas and processing of materials from those areas at the Webberville processing plant has been completed, or thirty-five (35) years after the effective date of this ordinance, whichever is sooner.

- (C) The variance in this Subsection (C) applies to site plan revision applications for the mining of sand and gravel on the properties described in **EXHIBIT A**. The variance is effective only after TXI has met all the conditions listed in Part 3 of this ordinance.

Subject to the conditions listed in Part 3 of this ordinance, a variance is granted from City Code Section 25-1-533 (*General Rules*) to allow the sand and gravel operations and development applications on the properties described in **EXHIBIT A** to comply with the regulations in effect on January 29, 2010 rather than the regulations in effect on the date the application is filed. This variance does not apply to regulations exempt from Texas Local Government Code Chapter 245 (*Issuance of Local Permits*).

PART 3. VARIANCE CONDITIONS.

- (A) Compliance with the conditions listed in this Subsection (A) shall be determined by the director of the Watershed Protection Department and the director of the Planning and Development Review Department based on site plan revisions filed by TXI. The site plan revisions filed by TXI shall include notes requiring ongoing compliance with the listed conditions.

(1) Haul Road and/or Conveyor

Plans filed by TXI shall demonstrate:

- (a) Erosion and sedimentation controls (“ESC”) shall be installed at each creek crossing to remove sediment from road runoff in accordance with the City of Austin Environmental Criteria Manual (“ECM”).
- (b) The 2-year storm shall be used as the minimum storm for ESC design.
- (c) All berms and other ESC shall be placed to avoid trees, and may not be placed within the critical root zones of trees.

(2) Critical Water Quality Zone:

Plans filed by TXI shall demonstrate:

- (a) Maximum use of ESC per ECM Section 1.4, with a focus on prevention of erosion of disturbed soils using site management and prevention techniques including but not limited to maximizing phasing, placing stockpiles outside of the floodway, providing temporary stabilization within 14 days, diverting flows around work areas, and placing controls in layers where appropriate.
- (b) The limits of construction shall exclude the critical water quality zone, to the maximum extent feasible.

(3) Bridge Crossing over Gilleland Creek:

Plans filed by TXI shall demonstrate:

- (a) Stream channel bed and bank stability, using HEC/RAS modeling with creek at range of flows up to 100 year storm and Colorado River at base flow conditions.
- (b) Approaches to bridge (paved and unpaved) shall be designed to withstand the 100 year storm.
- (c) The bridge and its paved approaches have curbs directing all stormwater to sedimentation basins.
- (d) The road is graded to drain to sedimentation basins.
- (e) The ESC have sediment basins or traps per ECM Section 1.4.5(K) or (L) to remove sediment prior to discharge to vegetated areas.

- (f) Basins and traps are able to be easily maintained and applicant shall clean the basins and traps when sediment reaches either 50% of design depth or 1 foot, whichever occurs sooner.
- (g) Discharges from basins or traps shall be dispersed to vegetated areas using a level spreader and shall be designed to eliminate the possibility of erosive flows.
- (h) A schedule for periodic street cleaning of the bridge and its paved approaches and regular ESC maintenance plan.

(4) At-Grade Crossings over Elm Creek:

Plans filed by TXI shall demonstrate:

- (a) Appropriate armoring and anchoring of at-grade crossing for stability and to prevent scour of channel at base flow and up to 100-year storm.
- (b) Approaches to at-grade crossing (paved and unpaved) shall be designed to withstand 100-year storm.
- (c) Roadside channels on each side of the road down slope to the at-grade crossing shall constitute a series of gentle drops (“broken backs”) and flow shall be designed to eliminate the possibility of erosive flows.
- (d) Berms shall be composed of compacted earth and vegetated with sod and shall be designed as sedimentation basin or traps per ECM Section 1.4.4.B.1, Section 1.4.4.B.2, and Section 1.4.5(K) or (L).
- (e) Berms shall be designed to be stable and permanent in flows up to the 100-year storm.
- (f) All berms and other ESC shall be placed to minimize the effect on trees.
- (g) Quantification of performance for TSS removal per ECM Section 1.4.4.B.1, Section 1.4.4.B.2, and Section 1.4.5.K.
- (h) Mulch logs shall be used instead of silt fence outside of berms during construction and shall be removed after construction is complete.
- (i) A schedule for periodic street cleaning of the at-grade crossings and their paved approaches and regular ESC maintenance plan.

(5) Conveyor:

Plans filed by TXI shall demonstrate that any mechanical material transport at any stream crossing shall be placed above the elevation of the 100-year, 24-hour storm and shall have sufficient containment to prevent discharge of materials into or adjacent to streams. This condition shall be included as a plan note on the submitted site plan revision.

(6) Wetland Protection:

Plans filed by TXI shall demonstrate:

- (a) The limits of construction shall exclude Critical Environmental Feature (CEF) setbacks to the maximum extent feasible.
- (b) All CEFs and approved CEF setbacks shall be shown on the plan sheet, including those within the ordinary high water mark of Gilleland Creek. A note may be made on the plan sheet that CEF details may be modified only upon approval by the director of the Watershed Protection Department or designee.
- (c) A Restrictive Covenant, approved by the City Attorney or designee, executed by TXI, and filed of record in the Real Property Records of Travis County, Texas, shall restrict from development and ensure that the mitigation area more particularly described in the attached **EXHIBIT C** remains undisturbed and in its natural state in perpetuity.

(7) Additional Conditions:

- (a) TXI shall not use fertilizers, pesticides, or herbicides within the critical water quality zone, except those used for agricultural purposes.
- (b) TXI shall revegetate all disturbed areas within the Critical Water Quality Zone in accordance with City Standard Specification Series 600, item 609S (*Native Grassland Seeding and Planting for Erosion Control*) including rooted plantings, seeding, soil type and depth, and temporary irrigation. Species selection shall be based on site specific species, and must be approved in advance by the City.
- (c) TXI shall be required to post fiscal security and provide temporary irrigation as required under the Austin City Code,

which may include but is not limited to use of water trucks or a sprinkler system.

- (d) TXI shall file site plan revision applications for the mining of sand and gravel on the properties described in **EXHIBIT A** not later than 60 days after the effective date of this ordinance.
- (B) Compliance with the conditions listed in this Subsection (B) shall be determined by the City Attorney based on documents provided by Travis County and TXI.
 - (1) Agreement:

A Development Agreement between Travis County and TXI regarding the development of the properties subject to City Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D, and the development of the properties described in **EXHIBIT A** has been executed and recorded in the Real Property Records of Travis County, Texas.
 - (2) Escrow:

TXI and Travis County have placed in escrow all items required to be escrowed under the Development Agreement.

PART 4. EXPIRATION; LIMITATION.

- (A) The variances granted in Part 2 (A) of this ordinance expire upon the expiration of City Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D.
- (B) The variance granted in Part 2 (C) of this ordinance expires:
 - (a) 60 days after the effective date of this ordinance if sand and gravel mining site plan revision applications have not been filed for the properties described in **EXHIBIT A**; or
 - (b) upon expiration of the site plans for the properties described in **EXHIBIT A**, whichever is earlier.
- (C) The variances granted in this ordinance do not apply to any use other than sand and gravel mining, the internal haul road and/or conveyor and associated creek crossings on the properties subject to City Site Plan Nos. SP-2008-0513D, SP-2008-0515D, and SP-99-0186D.

- (D) Development applications filed for uses other than sand and gravel mining on the properties subject to this ordinance must comply with the regulations in effect at the time of application.

PART 5. Approval of the variances granted in this ordinance does not constitute approval of zoning, subdivision, a site plan, a building permit, or any other development permit, and it does not constitute a commitment to any particular land use, intensity of land use, or utility services.

PART 6. The requirements imposed by City Code Section 25-8-41 (*Land Use Commission Variances*) regarding the processing and granting of variances is hereby waived for the variances granted in this Ordinance.

PART 7. This ordinance takes effect on _____, 2012.

PASSED AND APPROVED

_____, 2012 §
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 § _____
 Lee Leffingwell
 Mayor

APPROVED: _____
 Karen Kennard
 City Attorney

ATTEST: _____
 Shirley A. Gentry
 City Clerk

**AN ORDINANCE GRANTING VARIANCES FOR SPECIFIC PROJECTS OF
TXI OPERATIONS, LP FROM CERTAIN REGULATIONS**

EXHIBIT A

**DESCRIPTION OF PROPERTIES TO FILE SITE PLANS
FOR SAND AND GRAVEL MINING**

**AN ORDINANCE GRANTING VARIANCES FOR SPECIFIC PROJECTS OF
TXI OPERATIONS, LP FROM CERTAIN REGULATIONS**

EXHIBIT B

LOCATION OF CREEK CROSSINGS

**AN ORDINANCE GRANTING VARIANCES FOR SPECIFIC PROJECTS OF
TXI OPERATIONS, LP FROM CERTAIN REGULATIONS**

EXHIBIT C

DESCRIPTION OF WETLAND MITIGATION AREA