



MEMORANDUM

TO: Rodney Gonzales, Director
Development Services Department

FROM: Chuck Lesniak, Environmental Officer
Watershed Protection Department

DATE: July 13, 2016

SUBJECT: Recommendation on Marbridge Project Consent Agreement

In consultation with Watershed Protection Department and Development Services Department staff I have reviewed the proposed Marbridge Project Consent Agreement (PCA) for the property at 12501 Hewitt Lane (aka Brodie Lane tract). As required by City Code Ch. 25-1-544(D)(3) I am providing you my recommendation regarding the environmental benefits of the proposed Project Consent Agreement.

I understand that the Brodie Lane tract was denied vesting by the City under the City's vesting ordinance, Ch. 25-1 Article 12, and Ch. 245 of the Texas Local Government Code and that determination has been disputed by the applicant, who has now proposed a PCA. If the applicant were to prevail in their request for vesting the development would be entitled to develop under 1984 regulations. These regulations did not include any limits on impervious cover, require water quality treatment, creek buffers, or any of the other modern environmental protection requirements. The property does have a flood plain easement shown on the plat that would significantly limit development in the flood plain.

Proposed PCA

The Marbridge applicant is proposing a PCA that would allow additional commercial development on a property in the Desired Development Zone – the “Brodie Lane Property” – in exchange for reduced development potential on a property over the Barton Springs portion of the Edwards Aquifer Recharge Zone – the “Exchange Tract.” The relative locations are shown in Figure 1. A description of both properties and the proposed terms of the PCA are provided below.

Exchange Tract

The Exchange Tract (Attachment A) is a 41 acre property located on Bliss Spillar Road approximately one-half mile west of FM 1626, in the City's extraterritorial jurisdiction (ETJ) (see Attachment A – Exchange Tract). The site is located in the Bear Creek watershed over the Edwards Aquifer recharge zone, which is classified as the Barton Springs Zone. A tributary to Bear Creek runs through the center of the property from west to east. The creek is classified as a minor waterway and is protected by a critical water quality zone (CWQZ) and water quality transition zone (WQTZ). The northeast corner of the site also contains areas of CWTZ and WQTZ for the main stem of Bear Creek, which is located within City of Austin preserve land adjacent to the property.

The Exchange Tract is currently partially developed with 1.36 acres of impervious cover, consisting of two driveways, a guest house used by families of Marbridge residents, a small animal barn used by 4-H members, and an abandoned barn. Both driveways cross the CWQZ and WQTZ for the tributary to Bear Creek and the 4-H barn is located within the WQTZ for the main stem of Bear Creek. Under current code, the Exchange Tract could be further developed with up to 4.3 acres of impervious cover total or 15 percent of net site area.

As noted above, the property is over the recharge zone and adjacent to the City's Water Quality Protection Land. Staff from the Watershed Protection Department have walked the property and did not find any obvious karst or recharge features on the tract, however, there are known, significant recharge features in Bear Creek just downstream of the property.

Brodie Lane Property

The Brodie Lane Property (Attachment B) is a 12 acre property located at the intersection of Brodie Lane, Hewitt Lane, and FM 1626, in the City's ETJ (see Attachment B – Brodie Lane Property). The site is located in the Bear Creek watershed outside of the Edwards Aquifer recharge zone, which is classified as Suburban. The northern portion of the property contains a tributary to Bear Creek, which is classified as a major waterway and is protected by a CWQZ. The site also contains an area of CWQZ for the main stem of Bear Creek, which is located across FM 1626 to the south of the property.

The Brodie Lane Property is currently undeveloped. Under current code, the maximum impervious cover for a commercial use would be 7.9 acres, or 65 percent of gross site area. However, there are approximately 8.6 acres of CWQZ on the property, which would prevent development of the maximum amount of impervious cover due to the very limited development allowed within the CWQZ. The north and south portions of the site are heavily wooded, and the property contains at least eight heritage trees.

Proposed PCA Terms

The proposed PCA will limit the amount and location of development that can occur on the Exchange Tract in exchange for allowing additional development on the Brodie Lane Property.

On the Exchange Tract:

- Limit impervious cover to a maximum of 2.12 acres, or 7.4 percent of net site area.
- Prohibit any new development on the north portion of the property as shown in the applicant's Exhibit B.
- Remove the existing 4-H barn and interior driveway north of the creek and the area restored with native vegetation
- Install a fence along the southern boundary of the WQTZ.

The driveway along the property's western boundary shall remain, since it is located in an access easement for the adjacent property to the north. The impervious cover limit established by the PCA would enable the property owner to remove the abandoned barn and construct a new guest house and horse barn on the southern portion of the property, as illustrated on the applicant's Exhibit B. With the exception of the impervious cover limit and prohibition on any development on the north portion of the property, any future development on the Exchange Tract would comply with code requirements at the time of application.

On the Brodie Lane Property:

- Limit impervious cover to a maximum of 7.9 acres, the maximum allowed by current code.
- Reduce the CWQZ to approximately 1.7 acres as shown in the applicant's Exhibit D.

- Allow two CWQZ crossings; one from Hewitt Lane in the northwest corner of the property, and one additional crossing in the interior of the site.
- Allow water quality and detention ponds within the CWQZ.
- Allow additional development within the drainage easement for the 100-year floodplain, as shown in the applicant's Exhibit D.
- Allow the applicant to request an administrative variance for up to ten feet of cut and fill, instead of a maximum of eight feet as allowed by code.
- Require protection of four heritage trees as shown in the applicant's Exhibit F.
- Require water quality controls in compliance with code requirements at the time of application.

Analysis

The proposed PCA will provide additional protection for the environmentally sensitive Exchange Tract, while waiving some current code requirements to enable additional development on the Brodie Lane Property. However, the proposed PCA does provide more environmental protections on the Brodie Lane Property than would be required for a vested project should the applicant prevail in their Ch. 245 claim. From an environmental standpoint, it is my opinion that impervious cover, water quality treatment, creek buffers, and tree protection are the key environmental issues of concern for these properties. A comparison of the potential vested code requirements, current code requirements, and proposed PCA terms for the Exchange Tract and the Brodie Lane Property is shown in Table 1.

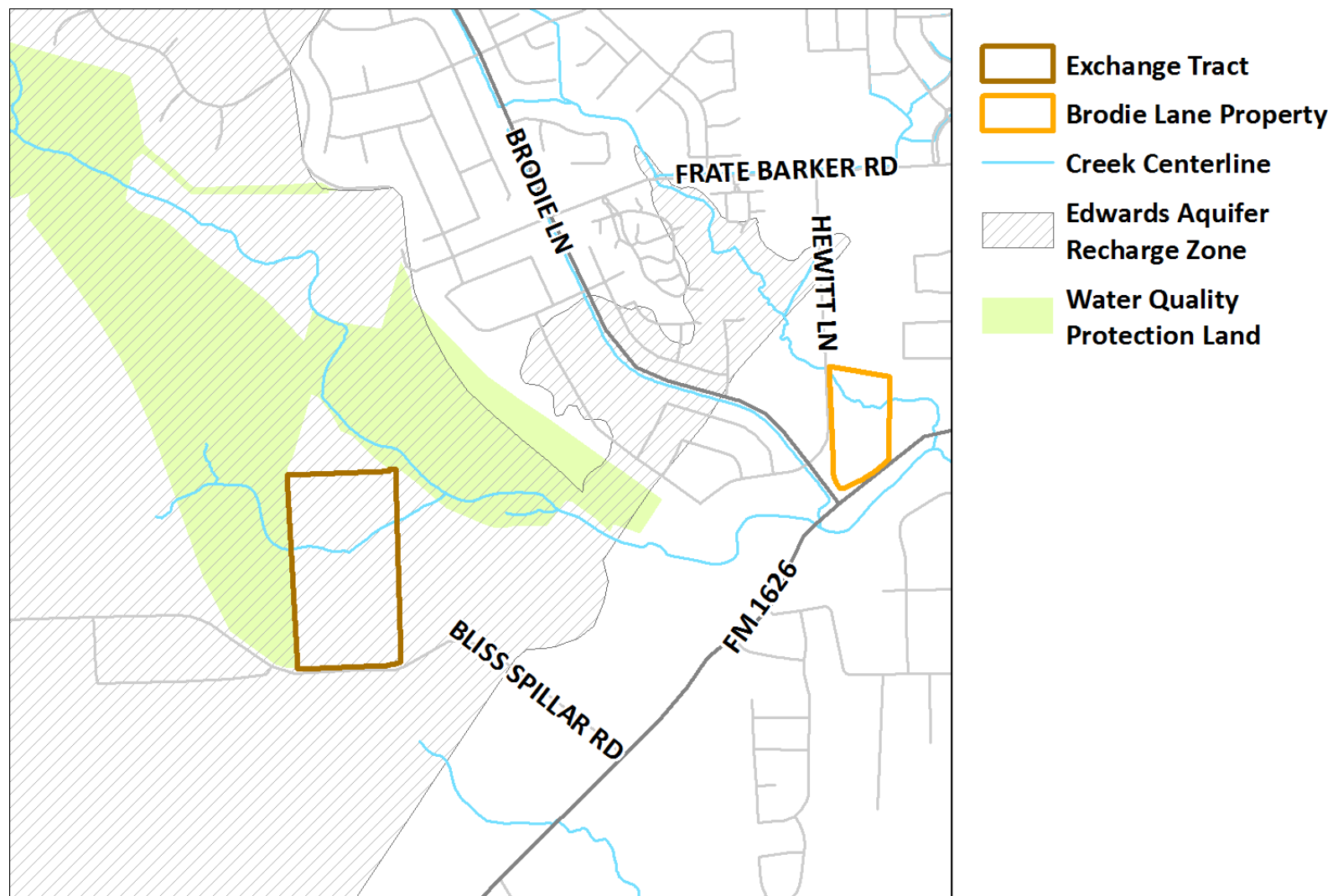
Table 1

	Residential Project Based on 1984 code	Current Code Requirement	Proposed
Brodie Lane Property			
Impervious Cover Limit	None	65% gross site area	65% gross site area
Water Quality Treatment	None	½”-plus sedimentation/ filtration standard	½”-plus sedimentation/ filtration standard
Creek Buffer	None	8.6 acres CWQZ (300’ from centerline)	1.7 acres CWQZ (width varies)
Cut and Fill Limit	None	Administrative variance for 4-8’; must be at least 100’ from classified waterway	Administrative variance for 4-10’; must be outside of the proposed CWQZ
Tree Protection	None	None (ETJ)	Protects 4 heritage trees
Exchange Tract			
Impervious Cover Limit	<i>n/a</i>	15% net site area (4.3 acres)	7.4% net site area (2.12 acres)
Water Quality Treatment	<i>n/a</i>	SOS non-degradation standard	SOS non-degradation standard
Creek Buffer	<i>n/a</i>	Minor: 50-100’ CQWZ, 100’ WQTZ Major: 300’ WQTZ	Minor: 50-100’ CQWZ, 100’ WQTZ Major: 300’ WQTZ Additional buffer provided by removing existing development and prohibiting future development on the northern portion of the property, adjacent to creek buffers
Cut and Fill Limit	<i>n/a</i>	4’	4’
Tree Protection	<i>n/a</i>	None (ETJ)	None (ETJ)

Recommendation

The removal of existing development and limitation of future development provides substantial environmental benefit to the Exchange Tract, which is located over the environmentally sensitive Edwards Aquifer Recharge Zone. In my opinion, this sufficiently offsets the additional development entitlements on the Brodie Lane Property and I recommend submitting the PCA to Council for consideration.

Cc: Andy Linseisen, P.E., Development Services Department
Susan Scallon, Development Services Department
Brent Lloyd, Law Department

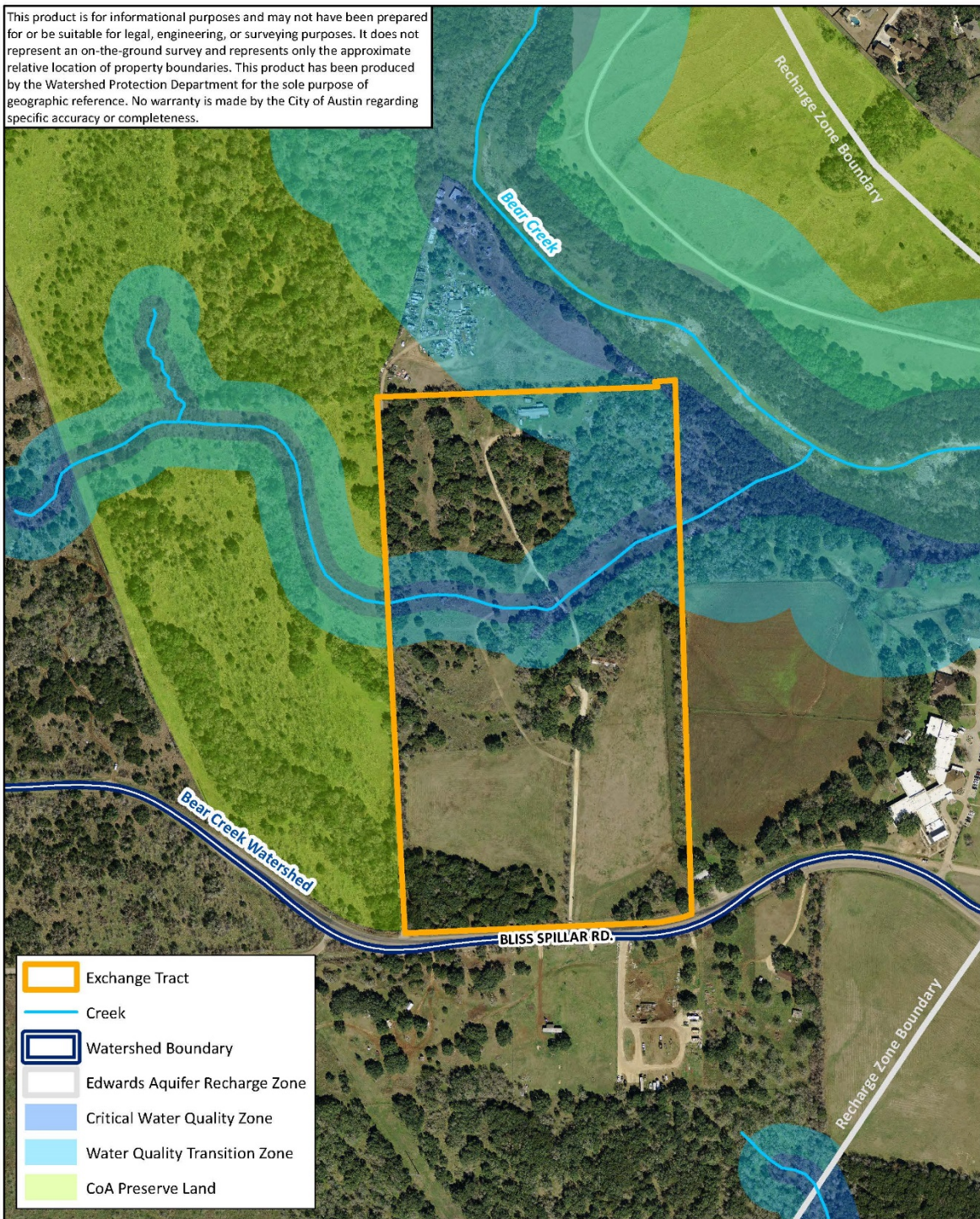


Vicinity Map

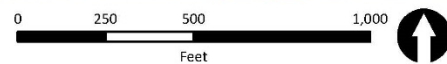


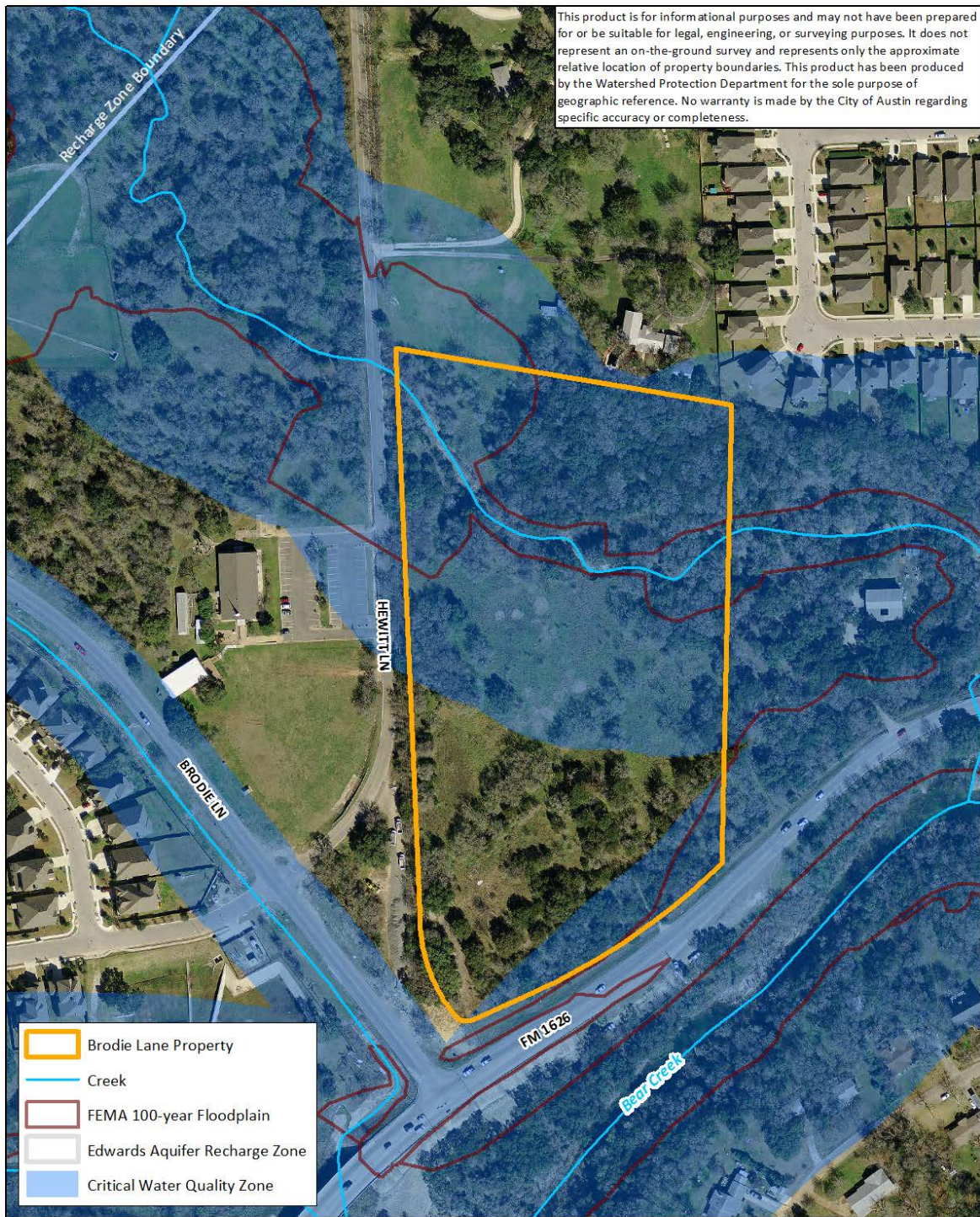
Figure 1: Location map

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Watershed Protection Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Attachment A - Exchange Tract





Attachment B - Brodie Lane Property



Marbridge Project Consent Agreement

Chuck Lesniak, Environmental Officer
Watershed Protection Department



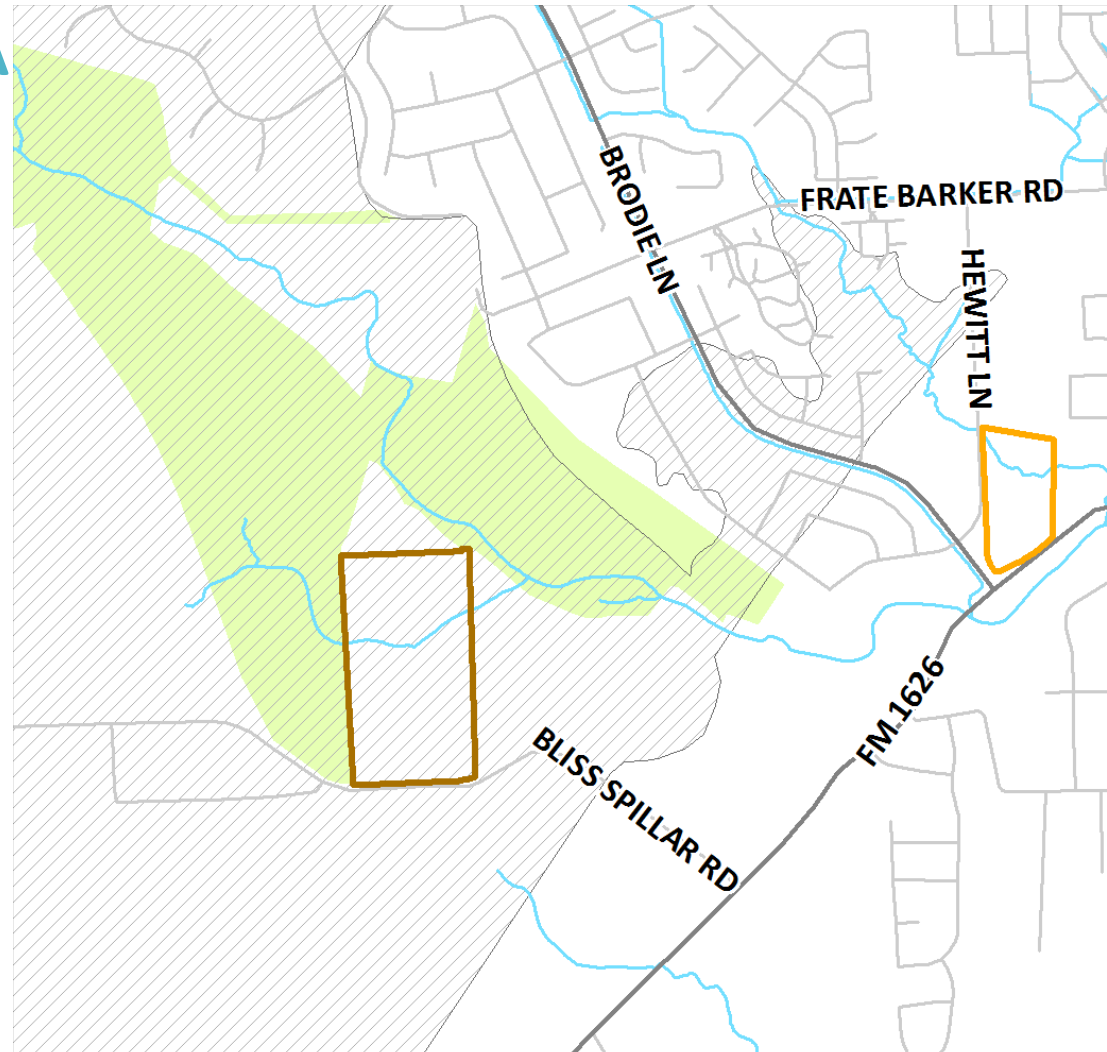
What is a Project Consent Agreement?

- Authorized by City Code Section 25-1-544 as part of the City's vested rights ordinance:
 - (A) This section provides a voluntary mechanism for determining applicable regulations where the extent of a project's **vested rights are unclear** and for **incentivizing projects with clearly established vested rights** to achieve greater compliance with current regulations.*
- Can be initiated by the Director of Development Services or by City Council
- Requires a recommendation from the Environmental Officer
- Must go before the Environmental Commission and the Land Use Commission for consideration of a recommendation to Council

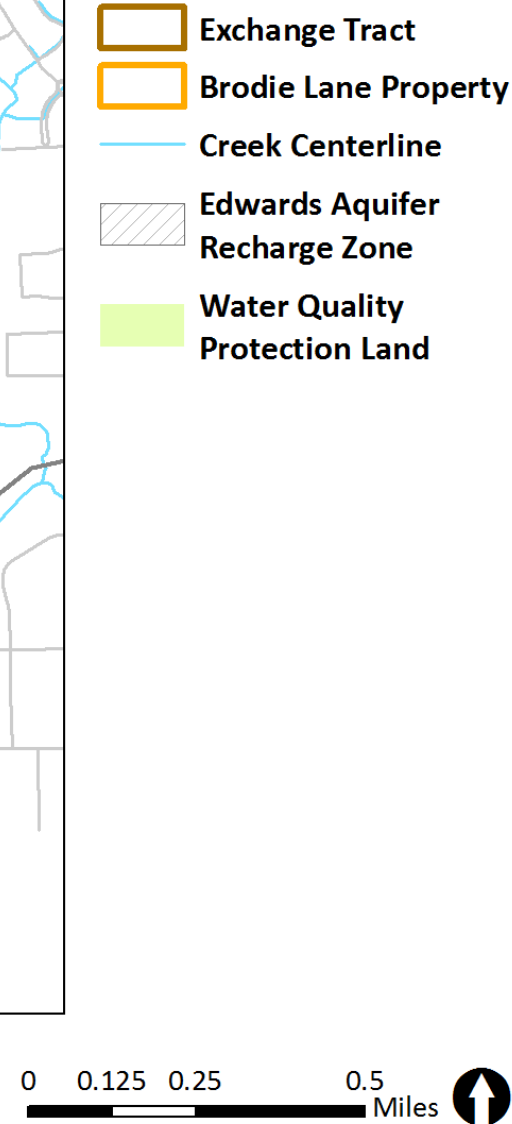
Marbridge PCA

Proposed to facilitate development of a grocery store at Brodie Lane and FM 1626

- Requests reduction in Critical Water Quality Zone to allow max impervious cover
- Offers to reduce development and provide additional environmental protection on property over Edwards Aquifer Recharge Zone



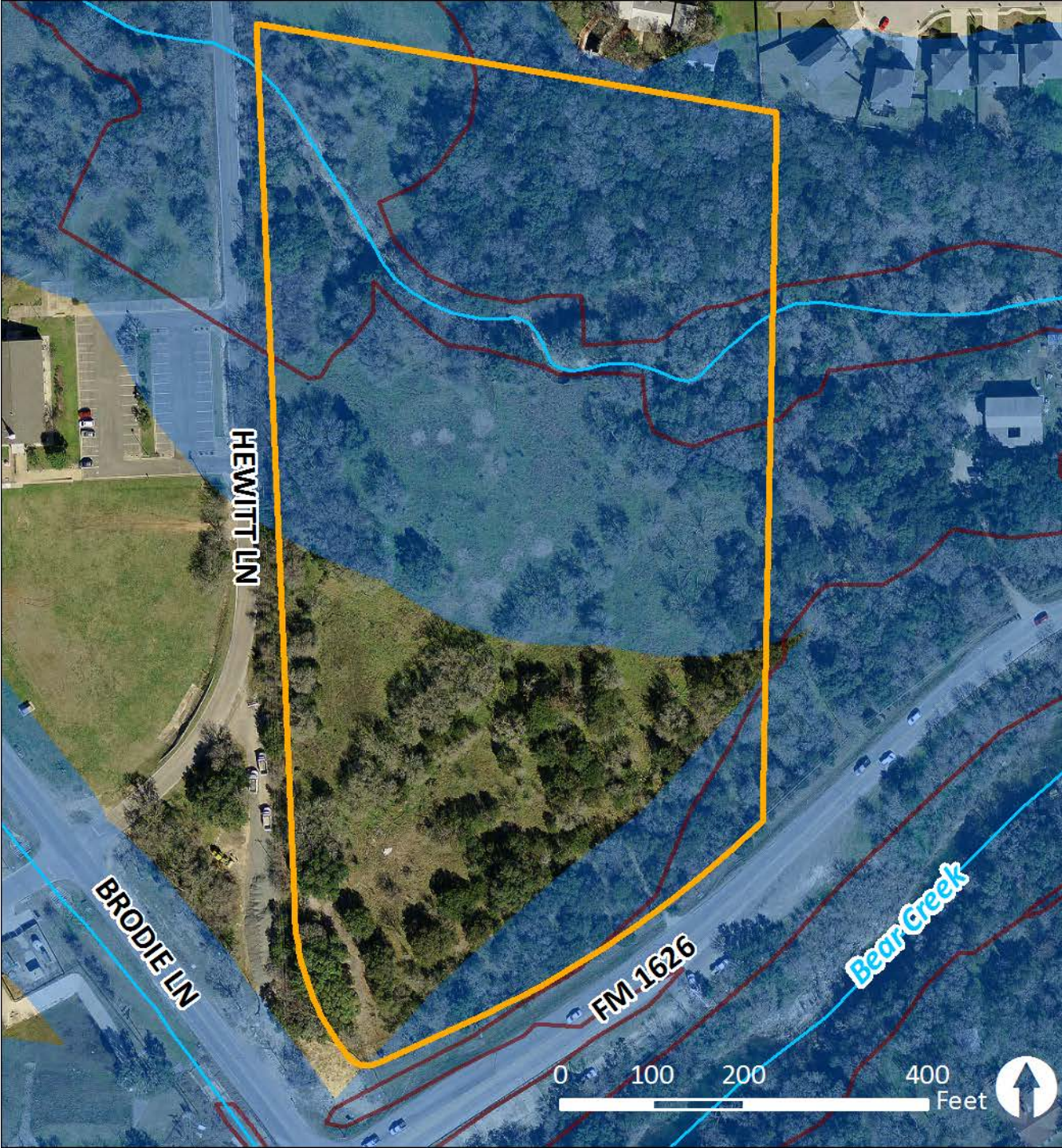
Vicinity Map



PCA Details

Brodie Lane Property

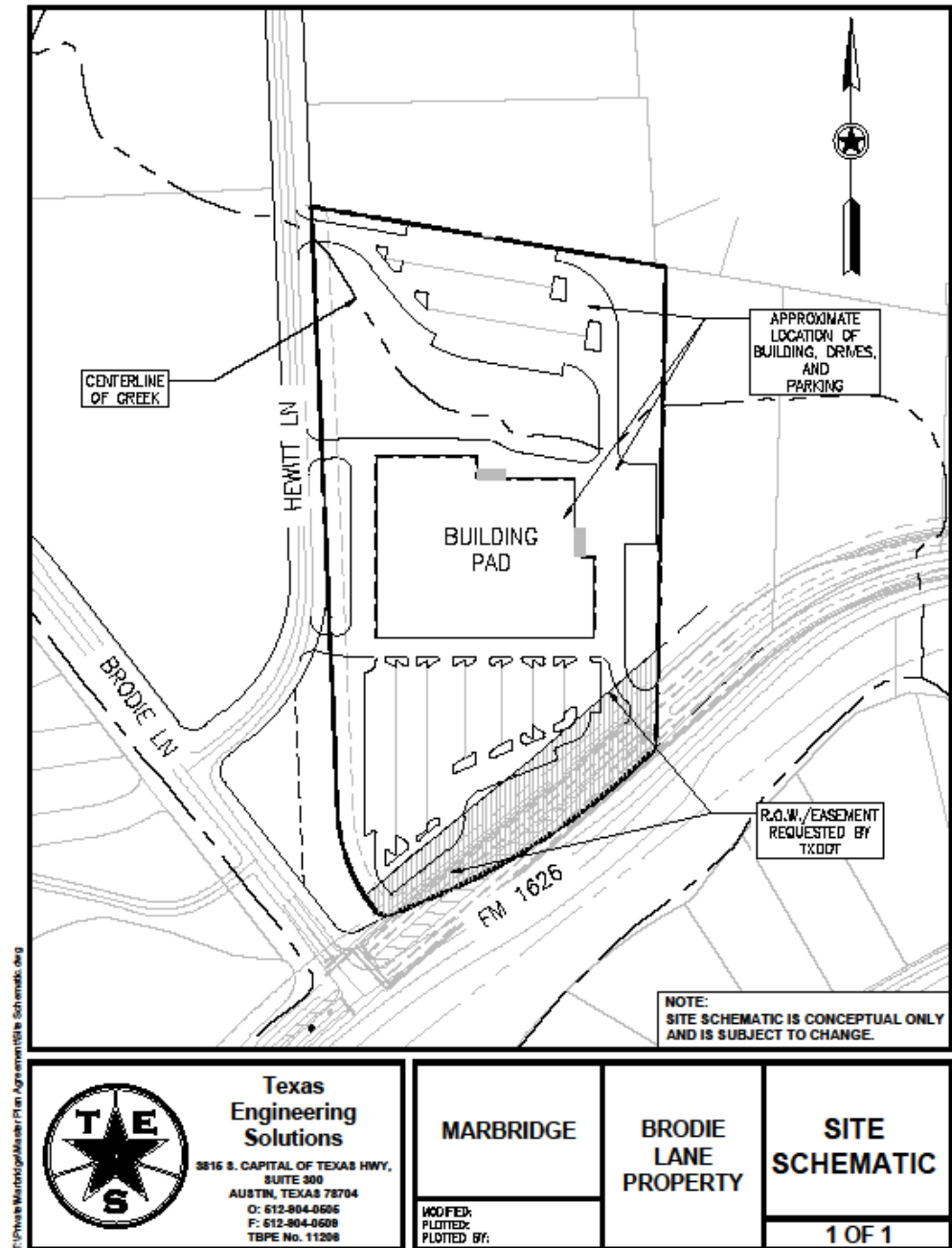
- Limit impervious cover to 7.9 ac.
- Reduce CWQZ to approximately 1.7 ac.
- Allow two CWQZ crossings; 1 from Hewitt Lane in the NW corner of the property, and 1 crossing in the interior of the site
- Allow water quality and detention ponds within the CWQZ
- Allow additional development within the drainage easement for the 100-year floodplain
- Allow an administrative variance for up to 10 feet of cut/fill
- Require protection of four heritage trees on SW corner of property
- Require water quality controls in compliance with code requirements at the time of application



-  Brodie Lane Property
-  Creek
-  FEMA 100-year Floodplain
-  Critical Water Quality Zone

Brodie Lane Property

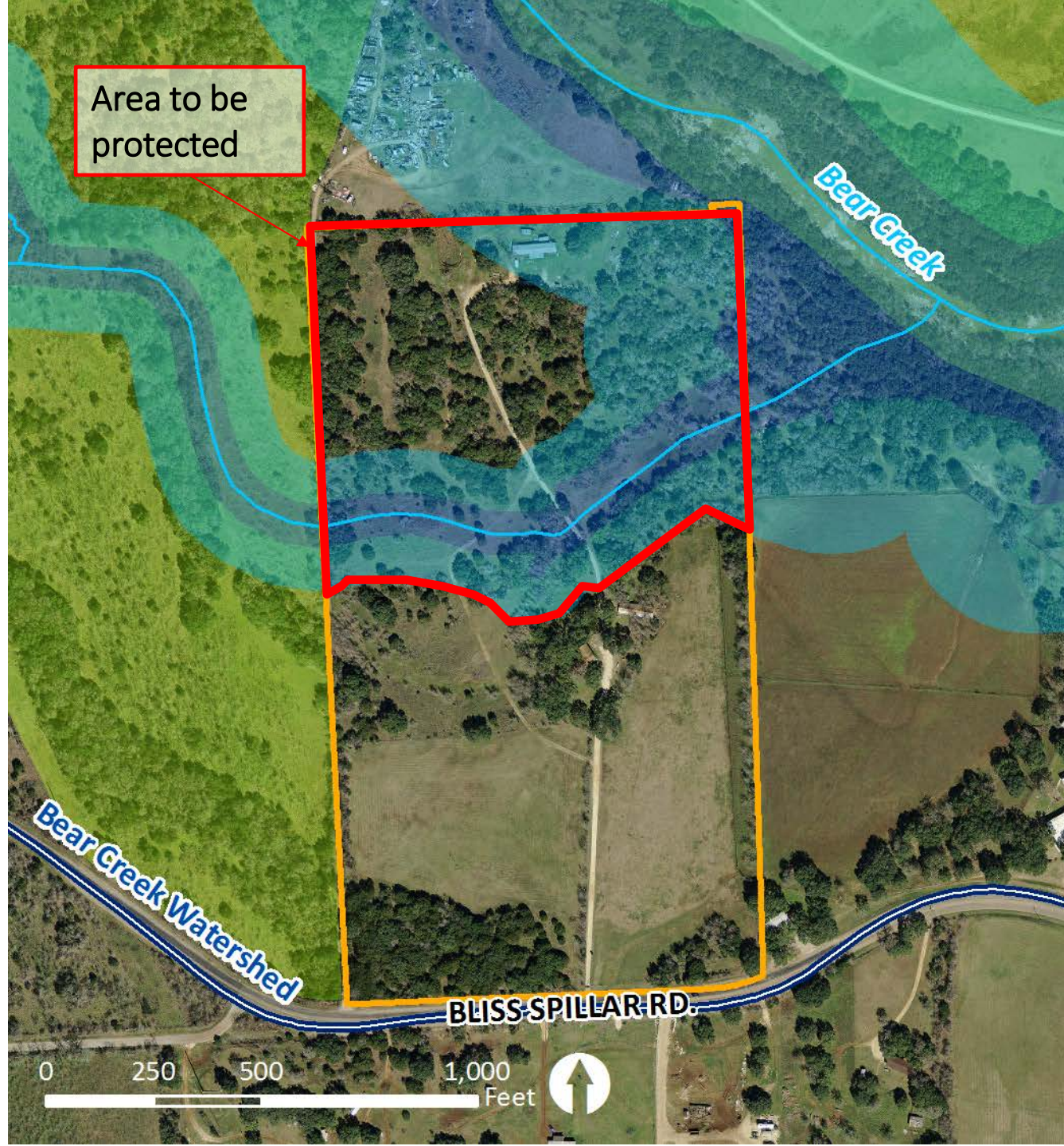
Brodie Lane Conceptual Plan



PCA Details

Exchange Tract

- Limit impervious cover to a maximum of 2.12 acres or 7.4 percent of net site area
- Remove the existing 4-H barn and interior driveway north of the creek and restore the area with native vegetation
- Prohibit any new development on the north portion of the property near Bear Creek upstream of in-stream recharge features
- Install a fence along the southern boundary of the WQTZ



- Exchange Tract
- Creek
- Watershed Boundary
- Critical Water Quality Zone
- Water Quality Transition Zone
- CoA Preserve Land

Exchange Tract

Recommendation

Staff recommends approval based on:

Benefits to environmentally sensitive Exchange Tract

- Limiting impervious cover
- Removal of existing development and restoration of those areas near Bear Creek
- Prohibiting development in developable areas near creek buffers upstream of recharge features within Bear Creek

Characteristics of Brodie Lane Property

- Protection of several heritage trees on the Brodie Lane tract
- Brodie Lane property is in the Desired Development Zone, is surrounded by more heavily developed areas and is adjacent to two major roads

Questions?