

#### ITEM FOR ENVIRONMENTAL COMMISSION AGENDA

**COMMISSION MEETING** 

November 6, 2019

DATE:

NAME & NUMBER OF

PROJECT:

SP-2019-0108D Thaxton Road Tract Offsite Wastewater Improvements

NAME OF APPLICANT OR

Phillip Boghosian – Owner

**ORGANIZATION:** 

Daniel Ryan – LJA (Civil Engineer)

AWU – Co-sponsor of project

LOCATION:

6810-1/2 Colton Bluff Springs Road, Austin, TX 78744

**COUNCIL DISTRICT:** 

2-Mile Extraterritorial Jurisdiction

**ENVIRONMENTAL** 

Jonathan Garner

**REVIEW STAFF:** 

Environmental Review Program Coordinator, DSD

Jonathan.Garner@austintexas.gov

WATERSHED:

Marble Creek, Suburban, Desired Development Zone

**REQUEST:** 

Variance request is as follows:

Request to vary from LDC 25-8-261 to allow development within a

Critical Water Quality Zone

STAFF

Staff does not recommend this variance, having determined that the

**RECOMMENDATION:** 

findings of fact have not been met.

## **Staff Findings of Fact and Exhibits**



#### Development Services Department Staff Recommendations Concerning Required Findings

Project Name: SP-2019-0108D Thaxton Road Tract Offsite Wastewater

**Improvements** 

Ordinance Standard: Watershed Protection Ordinance

Variance Request: To allow development in a Critical Water Quality Zone

Include an explanation with each applicable finding of fact.

A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:

- 1. The requirement will deprive the applicant of a privilege available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.
  - No. The wastewater line is proposed within a dedicated easement that was not reviewed and approved by environmental review staff of the Development Services or Watershed Protection Departments prior to dedication. The proposed wastewater line would encroach into the erosion hazard zone and an area that is less than the minimum 150 feet setback from the center line of the adjacent major waterway (Marble Creek). An easement dedication does not guarantee the right to construct a utility otherwise prohibited by the Land Development Code.

#### 2. The variance:

- a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance:
  - No. Alternative alignments that would not encroach into the minimum setback of the critical water quality zone exist. However, the applicant intends to take advantage of an already dedicated easement and provide a gravity-fed wastewater line, rather than dedicate a new easement within the right-of-way and provide a force main line with lift stations, as needed. As proposed, the wastewater line will result in permanent alteration of the critical water

quality zone and does not provide greater overall environmental protection because of the potential for leaks and breaks in the line resulting in sewage overflows into clean-flowing creeks.

- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;
  - No. There are alternative locations for the wastewater line and access road that would not necessitate a variance.
- c) Does not create a significant probability of harmful environmental consequences.
  - No. As currently designed, the proposed wastewater line construction intends to bore under the critical water quality zone and the erosion hazard zone, with an overall approximate average depth of 8-12 feet, resulting in disturbance to subsurface hydrology and removal of native soils. The proposed wastewater line will require future repairs from eventual breaks and sewage overflows, which will require trenching to repair the line that equates to removal of riparian vegetation and disturbance to hydrologic functions.
- 3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.
  - N/A. Water quality treatment is not required for a subsurface utility line.
- B. The Land Use Commission may grant a variance from a requirement of Section 25-8-422 (Water Supply Suburban Water Quality Transition Zone), Section 25-8-452 (Water Supply Rural Water Quality Transition Zone), Section 25-8-482 (Barton Springs Zone Water Quality Transition Zone), Section 25-8-368 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long), or Article 7, Division 1 (Critical Water Quality Zone Restrictions), after determining that::
  - 1. The criteria for granting a variance in Subsection (A) are met;
    - No. Staff has made the determination that because an alternative route and method of construction are available to provide wastewater utility service, the proposed location of the wastewater utility within the minimum setback of a Critical Water Quality Zone and the erosion hazard zone does not meet the criteria for granting a variance in Subsection A.
    - 2. The requirement for which a variance is requested prevents a

reasonable, economic use of the entire property;

No. There are viable alternatives to the proposed design.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

No. There are viable alternatives to the proposed design that would not require a variance.

Staff Determination: Staff determines that the findings of fact have not been met.

Environmental Reviewer	Longthon Compa	Date 10-30-2019
(DSD)	Jonathan Garner	
Environmental Review Manager (DSD)	Mike McDougal	Date <u>10</u> -30-2019
Environmental Officer (WPD)	Chris Herrington, P.E.	Date <u>10-31-2019</u>

## **Applicant Form and Findings of Fact**



#### **ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM**

PROJECT DESCRIPTION			
Applicant Contact Infor			
Name of Applicant	Philip Boghosian		
Street Address	7316 N. Hulbert		
City State ZIP Code	Fresno, California 93711		
Work Phone			
E-Mail Address			
Variance Case Informat	ion		
Case Name	Thaxton Road Tract Offsite Wastewater Improvements		
Case Number	SP-2019-0108D		
Address or Location	9000-10423 Thaxton Road		
Environmental Reviewer Name	Jonathan Garner		
Environmental Resource Management Reviewer Name			
Applicable Ordinance	Springfield Accommodation Agreement (Attached 245)		
Watershed Name	Marble Creek		
Watershed Classification	☐ Urban ☐ Suburban ☐ Water Supply Suburban ☐ Barton Springs Zone		
	Durton Springs Zone		

Edwards Aquifer Rech Zone		☐ Barton Springs Segment ☐ Northern Edwards Segment ☐ Not in Edwards Aquifer Zones				
Edwards Aquifer Contributing Zone	☐ Yes <b>■</b> No					
Distance to Nearest Classified Waterway	50 Feet at Closest Point on Alignment					
Water and Waste Wat service to be provided						
Request	·	The variance request is to allow a utility parallel to and within the critica water quality zone within 150 feet from the centerline of a major waterway (25-8-261 (E)).				
Impervious cover	Existing	Proposed				
square footage:	N/A	N/A				
acreage:						
percentage:						
Provide general						
description of the property (slope range, elevation	The property slopes between 0 and 10% generally. Elevations range from 648 ft to 578 ft above MSL.					
range, summary of vegetation / trees, summary of the geology, CWQZ,	The subject site is located within the Blackland Prairie ecological area of Texas and the Live Oak-Mesquite-Ashe Juniper Parks vegetational area of Texas. The subject site is dominated by woodland and rangeland species. The woodland species include honey mesquite, sugarberry, and ashe juniper while the grassland species include ragweed, johnsongrass, bluebonnet, and Texas prickly pear.					
WQTZ, CEFs, floodplain, heritage trees, any other	The geology of the site is composed of Fluviatile terrace deposits (Qt) and the Ozan Formation (Ko). These are composed of gravel, sand, silt and clay in various proportions.					
notable or outstanding characteristics of the property)	The site runs along Marble Creek which is a suburban watershed and does not encroach on any wetland CEFs. The alignment is located within the CWQZ of Marble Creek. The alignment crosses the 100 year fully developed floodplain.					

Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)

The project includes a section of gravity wastewater line proposed with an existing easement that is located parallel to and within the CWQZ within 150 feet of a major waterway, which is not allowed under 25-8-261 (E) of the Land Development Code.

Please find attached exhibits documenting proposed variance.

#### FINDINGS OF FACT

As required in LDC Section 25-8-41, in order to grant a variance the Land Use Commission must make the following findings of fact:

Include an explanation with each applicable finding of fact.

Project:

Ordinance:

- A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:
  - 1. The requirement will deprive the applicant of a privilege available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

Yes. The prohibition on construction of the wastewater line within the half critical water quality zone would mean the project would not be able to use the easement previously obtained by the City of Austin Water Utility for the purpose of installing this wastewater The Springfield subdivision was required to grant the easement in lieu of constructing this line. The City of Austin reviewed and accepted the easement knowing its location in relation to the centerline of the creek. In addition, the Springfield subdivision was previously allowed to construct a wastewater line within the exact same area as the area proposed. See also note on the applicability of the Accommodation Agreement by Mr. Jeff Howard on the attached letter.

- 2. The variance:
  - Is not necessitated by the scale, layout, construction method, or other design a) decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

Yes, the variance requested is not based on a condition caused by the method

chosen by the applicant. The proposed wastewater line location is the location established by the Austin Water Utility in an approved, and unexpired service extension request (see attached). There is an existing easement previously approved and accepted by the City of Austin being used for the location of the line. In addition, the development method does provide greater environmental protection than is achievable without the variance as a lift station in very close proximity to the creek would be required without that variance. In addition, the alternative would require an easement from the adjoining landowner, and no such easement has been obtained to date, and there is no means to require that such adjoining landowner provide such an easement.

b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

Yes, the variance requested is the minimum change necessary to allow for development of the property. Gravity wastewater service is necessary for the safe and orderly development of not only this tract but the entire upstream watershed.

c) Does not create a significant probability of harmful environmental consequences.

Yes, the proposed variance does not create a significant probability of harmful environmental consequences. In addition to being located above the bank of the creek on the high side, and adjacent to existing development, which minimizes the additional impact, the applicant proposes to bore and encase the pipe through the zone of encroachment to the maximum extent possible.

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 proposed project will result in equal water quality at a minimum. No disturbance of riparian areas is proposed, and the line will be encased through the section of encroachment. Moreover, this proposed alignment does not require a lift station which is considered more vulnerable to wastewater overflows due to mechanical failure or power outages.

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7, Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-368 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):
  - The criteria for granting a variance in Subsection (A) are met;

Yes, for the reasons provided above.

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

Yes, if the alignment approved with the original easement is not allowed the reasonable use of the property is prevented. A lift station, force main, and disturbance to existing public facilities, including existing subdivision streets, significantly greater than what is required for the approved easement would be required, at a significantly higher cost to the applicant and the City of Austin and impact to existing public streets, neighborhoods and residents.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

Yes, the proposed alignment of the wastewater line is the minimum necessary change to allow for the reasonable economic use of the property and reasonable mitigation of the impacts is being proposed.

\*\*Variance approval requires all above affirmative findings.



September 11, 2019

Chairperson
City of Austin Zoning & Platting Commission
c/o Development Services Department
City of Austin, One Texas Center
505 Barton Springs Road, 4<sup>th</sup> Floor
Austin, Texas

Re:

Thaxton Road Tract Offsite Wastewater Improvements

Watershed Variances

LJA Job No. A276-0409-409

#### Dear Chairperson:

On behalf of the Applicant for the Thaxton Road Tract Offsite Wastewater Improvements and in accordance with City of Austin Land Development Code 25-8-41 we respectfully request the following waiver from the City of Austin Land Development Code:

25-8-261 (E), Utility Location parallel to and within the critical water quality zone within 150 feet from the centerline of a major waterway;

## Justification: 25-8-41 (A)

(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 with similar code requirements?

Yes. The prohibition on construction of the wastewater line within the half critical water quality zone would mean the project would not be able to use the easement previously obtained by the City of Austin Water Utility for the purpose of installing this wastewater line. The Springfield subdivision was required to grant the easement in lieu of constructing this line. The City of Austin reviewed and accepted the easement knowing its location in relation to the centerline of the creek. In addition, the Springfield subdivision was previously allowed to construct a wastewater line within the exact same area as the area proposed. See also note on the applicability of the Accommodation Agreement by Mr. Jeff Howard on the attached letter.

(2)(a) The variance 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, the variance requested is not based on a condition caused by the method chosen by the applicant. The proposed wastewater line location is the location established by the Austin Water Utility in an approved, and unexpired service extension request (see attached). There is an existing easement previously approved and accepted by the City of Austin being used for

the location of the line. In addition, the development method does provide greater environmental protection than is achievable without the variance as a lift station in very close proximity to the creek would be required without that variance. In addition, the alternative would require an easement from the adjoining landowner, and no such easement has been obtained to date, and there is no means to require that such adjoining landowner provide such an easement.

(b) The variance 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, the variance requested is the minimum change necessary to allow for development of the property. Gravity wastewater service is necessary for the safe and orderly development of not only this tract but the entire upstream watershed.

(c) The variance does not create a significant probability of harmful environmental consequences;

The proposed variance does not create a significant probability of harmful environmental consequences. In addition to being located above the bank of the creek on the high side, and adjacent to existing development, which minimizes the additional impact, the applicant proposes to bore and encase the pipe through the zone of encroachment to the maximum extent possible.

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 proposed project will result in equal water quality at a minimum. No disturbance of riparian areas is proposed, and the line will be encased through the section of encroachment. Moreover, this proposed alignment does not require a lift station which is considered more vulnerable to wastewater overflows due to mechanical failure or power outages.

(B)

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

Yes, if the alignment approved with the original easement is not allowed the reasonable use of the property is prevented. A lift station, force main, and disturbance to existing public facilities, including existing subdivision streets, significantly greater than what is required for the approved easement would be required, at a significantly higher cost to the applicant and the City of Austin and impact to existing public streets, neighborhoods and residents.

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

Yes, the proposed alignment of the wastewater line is the minimum necessary change to allow for the reasonable economic use of the property and reasonable mitigation of the impacts is being proposed. Should you have any questions or need any additional information, please do not hesitate to call.

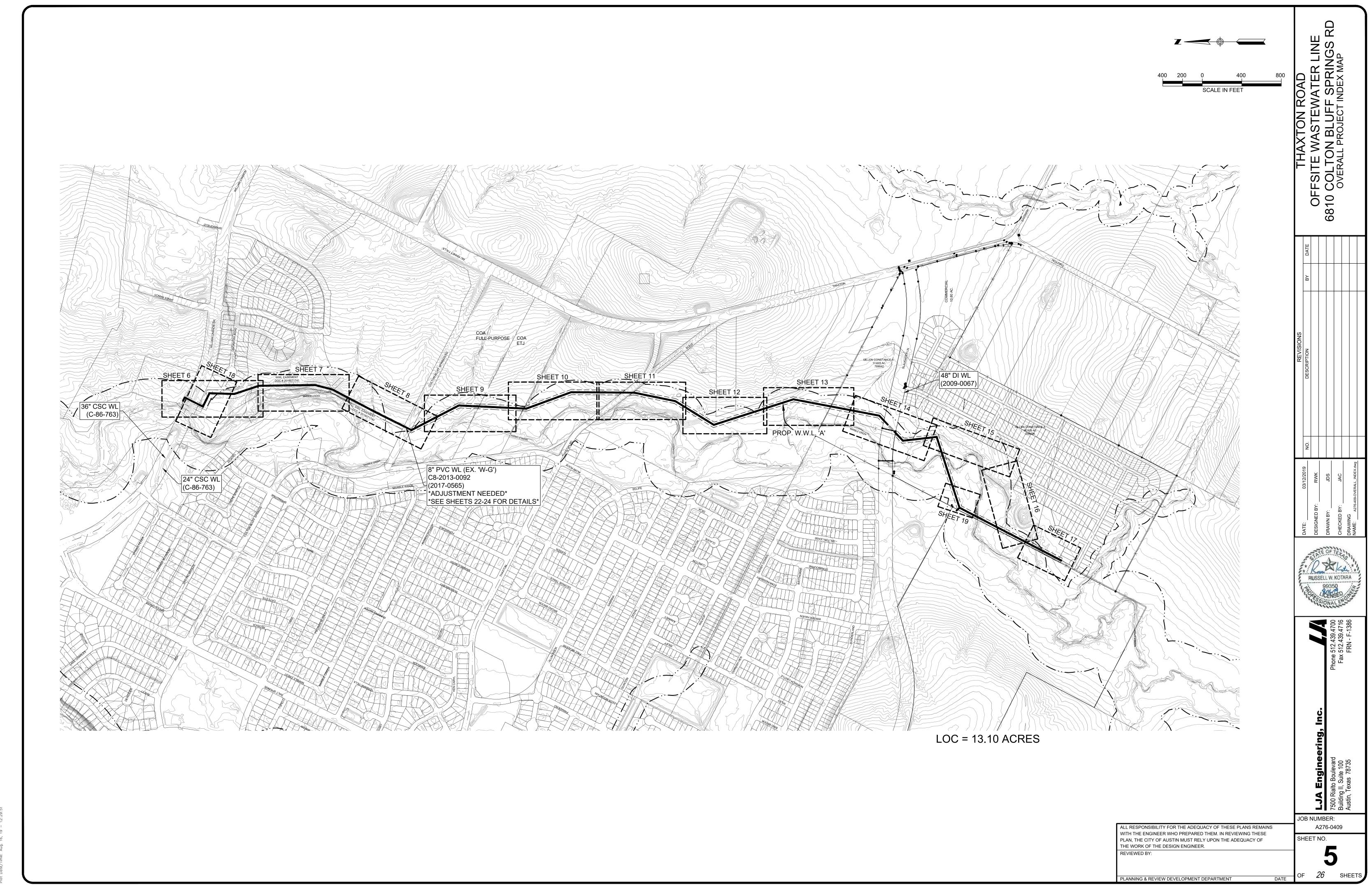
Sincerely,

Daniel Ryan, P.E.

cc: Royce Rippy - M/I Homes

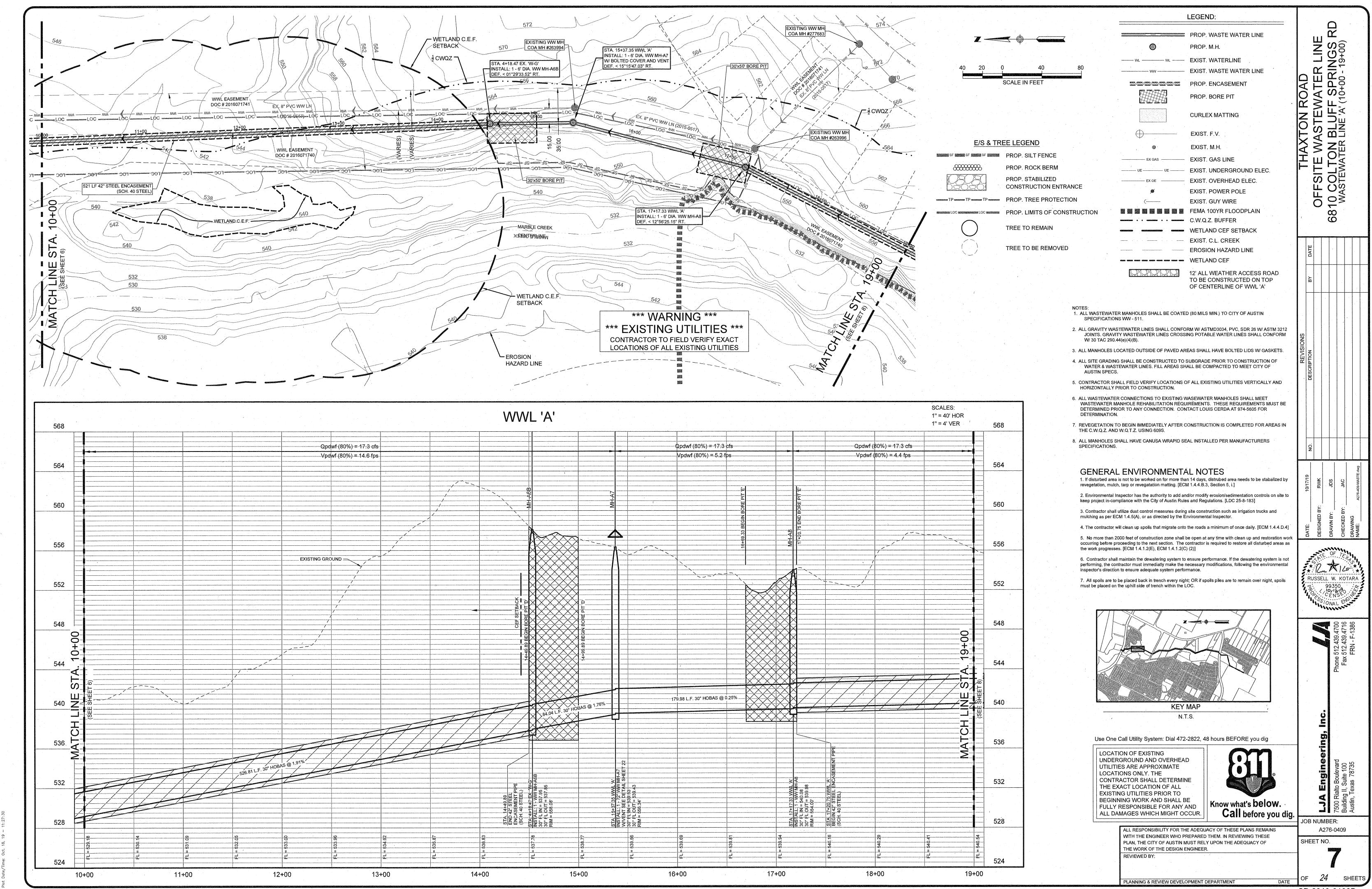
Jeff Howard - McLean & Howard, LLP

## **Applicant Exhibits**

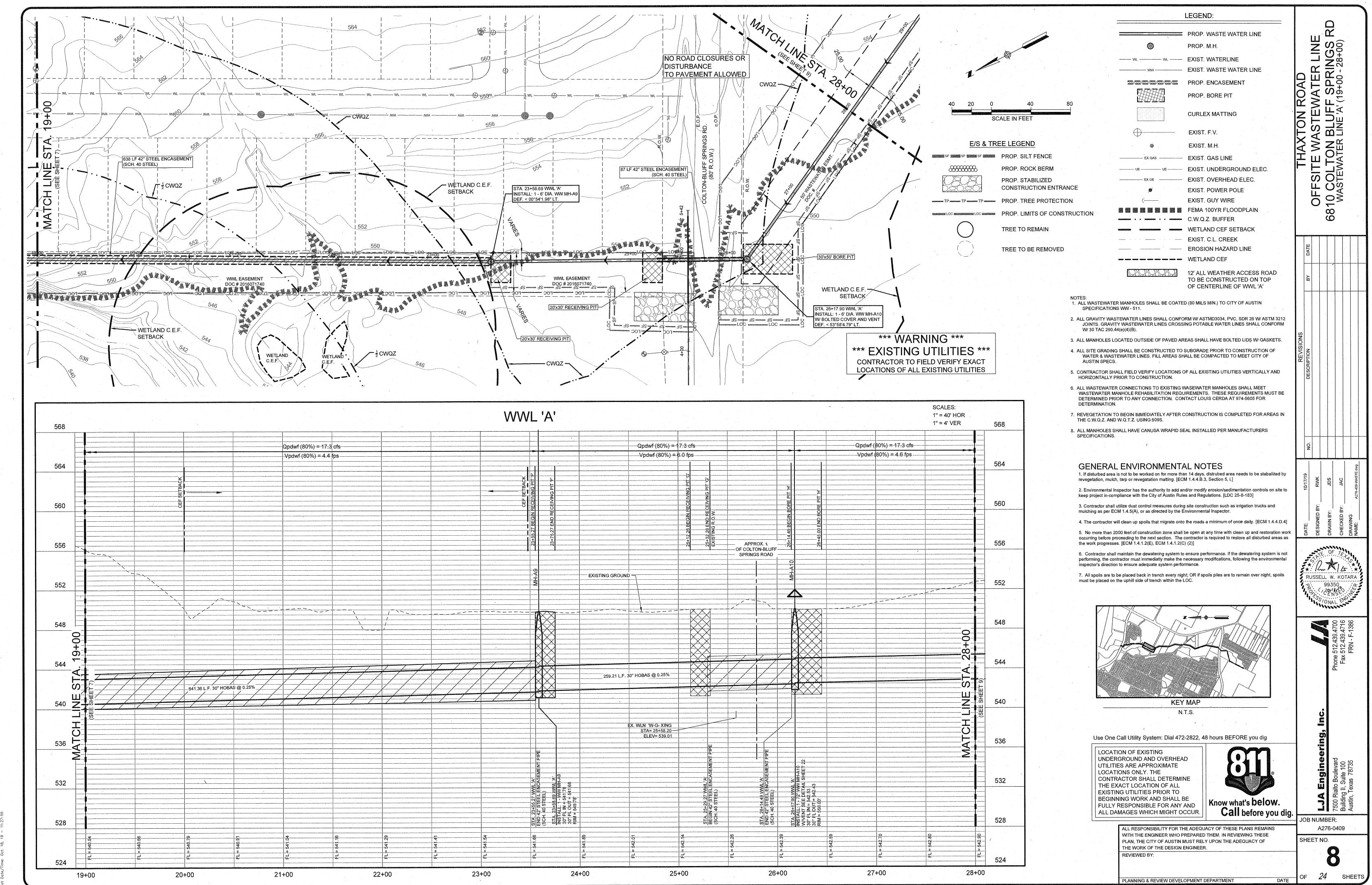


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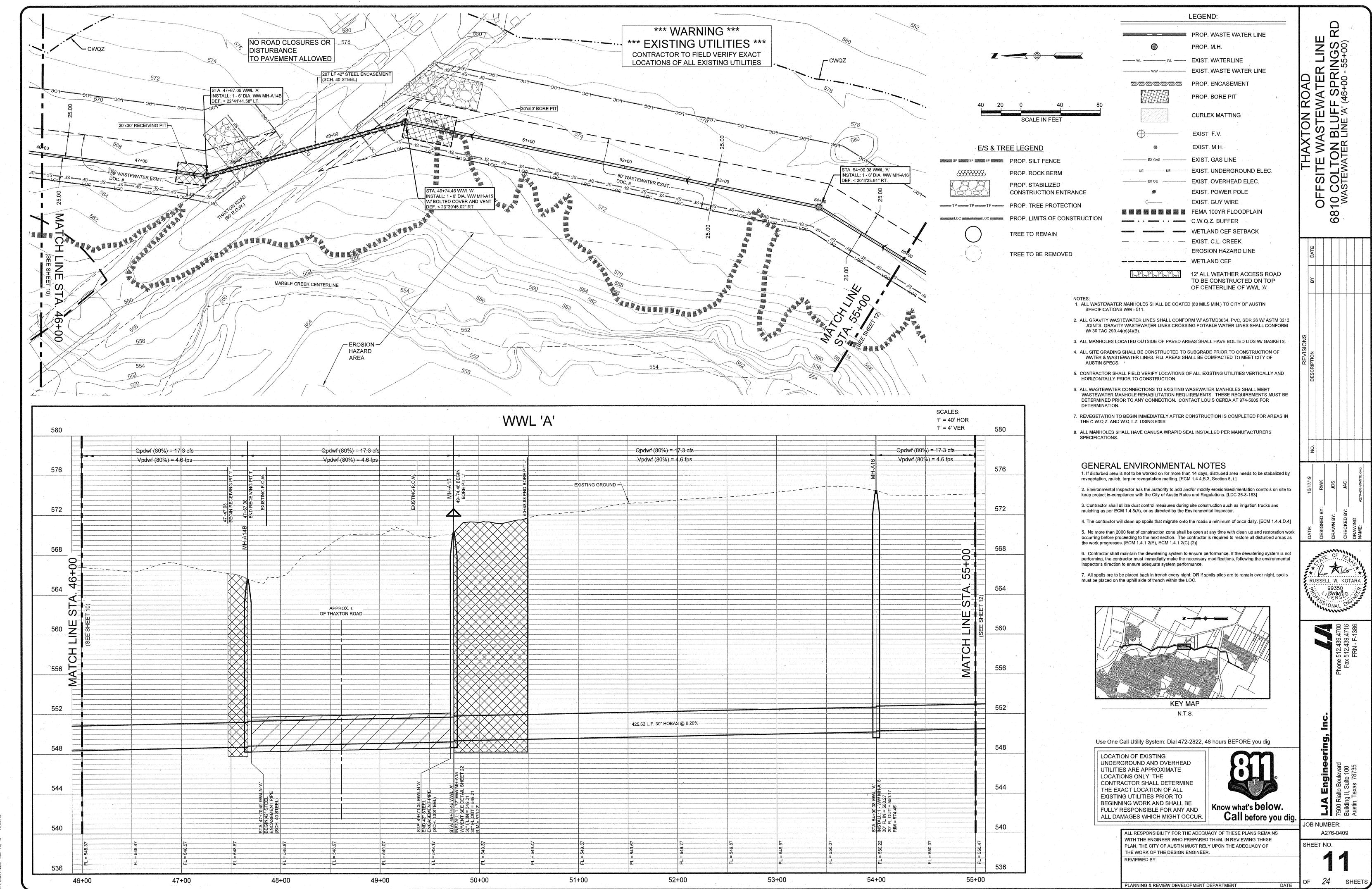
SP-2019-0108D



P-2019-0108D



SP-2019-0108D



# WATER AND WASTEWATER SERVICE EXTENSION REQUEST FOR CONSIDERATION

Name: Springfield Sections 2,3,4 & 5			Service R	equested: Wastewater	
SER-3414	Hansen Service Request	Number 512767		Date Received: 02/06/2014	
	•				
Location: 6801 E WILLIAM CANNON DR 1/2 AUSTIN TX 78744- SPRINGFIELD SECTIONS 2,3,4 & 5					
Acres: 89.72	Land Use:	MIXED			
Alt. Utility Service or S.E.R. Number: C	ity of Austin Water SER-3	413			
Quad(s): J13 K13				DDZ: YES	
Drainage Basin: MARBLE		Pressure Zone: SOUTH		DWPZ: NO	
Flow: (Estimated Peak Wet Weather Flow, Gallons per Minute) 280 GPM				% Within City Limits: 100	
Cost Participation: \$0.00				% Within Limited Purpose: 0	

#### **Description of Improvements:**

Applicant shall construct approximately 150 feet of 8-inch gravity wastewater main from the existing 18-inch gravity wastewater main (Project 99-0669) in E William Cannon Dr and extend south across E William Cannon Dr to the subject tract. Applicant shall also dedicate an appropriately sized wastewater easement for a future 24-inch wastewater interceptor along western property boundary, as approximately shown on the attached map.

NOTE: Wastewater flow based on engineering calculations received from Dustin Goss, P.E. on 05/02/2014.

### Approval of this Service Extension Request is subject to completion and acceptance of the improvements described above and the conditions set forth below:

- 1) Construction of all Service Extensions are subject to all environmental and planning ordinances.
- 2) Service Extensions are subject to the guidelines established in the Land Development Code, Section 25-9, Water and Wastewater Utility Service.
- 3) The level of service approved by this document does not imply commitment for land use.
- 4) Public utility mains must meet City of Austin Design and Construction Criteria and must be approved by Austin Water Utility Engineering Review.
- 5) Proposed public wastewater improvements will be dedicated to the City of Austin for ownership, operation, and maintenance.
- 6) Proposed public wastewater improvements must be placed in the public right-of-way or approved utility easements. Utility easements must be approved by Austin Water Utility Engineering Review and must be in place prior to construction plan approval.
- 7) The approved Service Extension will automatically expire 180 days after date of approval unless a development application has been accepted by the Planning and Development Review Department. The Service Extension expires on the date the development expires, or if approved, on the date the development application approval expires.

Prepared By Utility Development Services

Date

6-9-14

Assistant Director, Water Resources Management

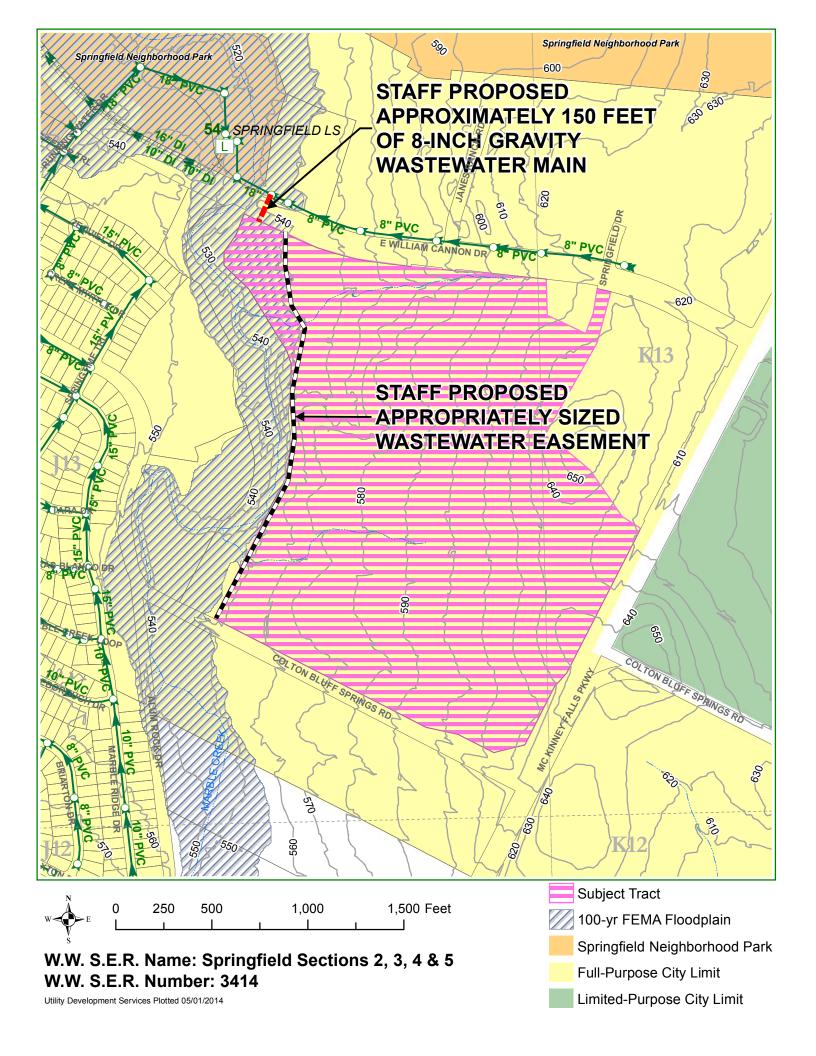
Date

Director, Austin Water Utility

Atility Development Service

Date

Date



## WASTEWATER APPROACH MAIN REQUEST FOR CONSIDERATION

www App. main No. 101/
Springfield Subdivision May 29, 1986
Tract Name Date
Size of Tract 441.0 Acres Intended Use Industrial
Other Utility Available X Yes No
Explain Status: Water Approach Main #779 approved by City Council on September 5, 1985.
Location:
Growth Management Area <u>III</u> Inside <u>% Outside 100%</u> City Limits  Drainage Basin <u>Onion Creek</u> Pressure Zone Central
Description: The property is located immediately south of the Williamson Creek Wastewater Plant and east of Nuckols Crossing Road.  System Demand, Living Unit Equivalents 3174 LUEs.
Peak Flow, Gallons per Minute 2430 gpm.
Description of Improvements Required:  1) Construct a standard City of Austin lift station and force main adequate to serve the entire Springfield, Marble Creek and the Bend at Nuckols Crossing Subdivisions.  2) Marble Creek Subdivision and the Bend at Nuckols Crossing to make a private Joint Venture Contract to pay for the lift station.
City Cost Participation \$0.00
Staff Recommendation: Approval Subject to:

Wastewater Approach Main #1017 Springfield Subdivision May 29, 1986 Page Two

2) Availability of sufficient permitted capacity at the South Austin Regional Wastewater Treatment Plant to serve applicant's wastewater discharge.

3) The amount of LUE's approved for wastewater commitment does not guarantee service in the event that the flows to South Austin Regional Wastewater Treatment Plant exceed legally permitted flows; and does not imply commitment for land use.

4) Applicant hereby agrees to dedicate necessary easements for construction of regional wastewater interceptor through his property.

Water & Wastewater Deputy Director

Prepared by Reddy Gogu

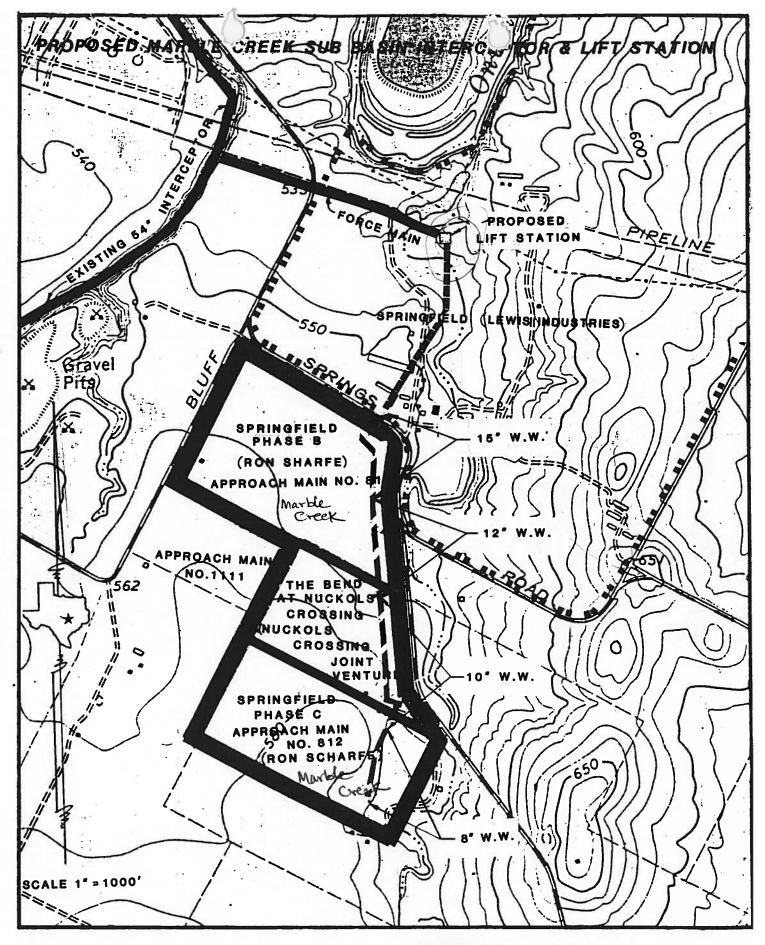
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wwam/1017

W+WW Comm. 6/4/86

The Water and Wastewater Commission recommends approval of the Springfield Addition Wastewater Approach Main No. 1017 subject to staff recommendations and subject to the following:

- 1. That Springfield Addition, Bend at Nuchols Crossing and Marble Creek make a Private Joint Venture Contract to pay for the approved City of Austin lift station.
- 2. That staff expedite these amendments so this contract can go forward.

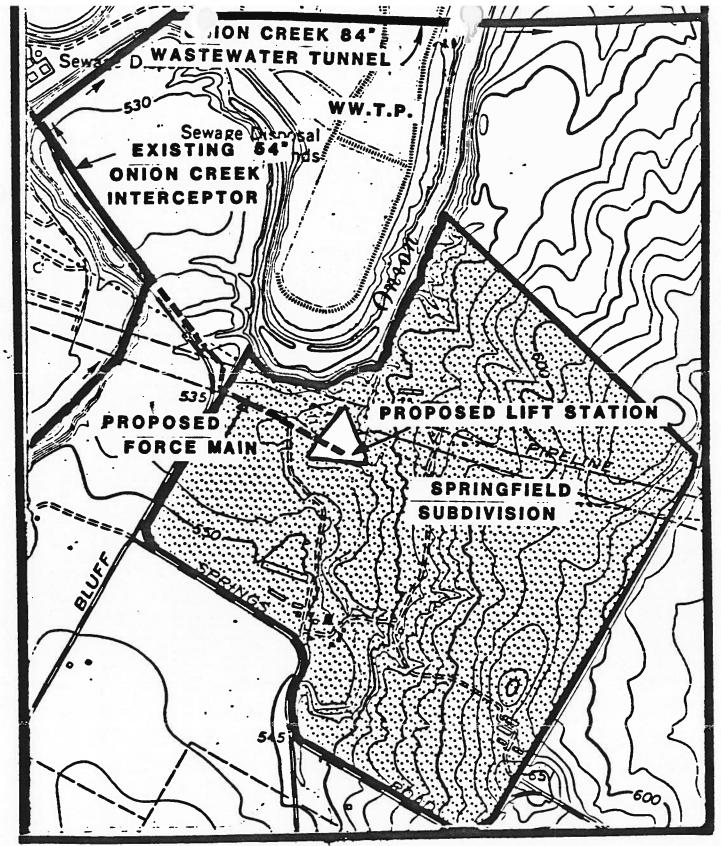


Springfield Subdivision
A.M. 1017



CONSULTING ENGINEERS AND PLANNERS

2499 CAPITAL OF TEXAS HIGHWAY, SUITE 21 AUSTIN, TEXAS 78746 (512) 327-7730

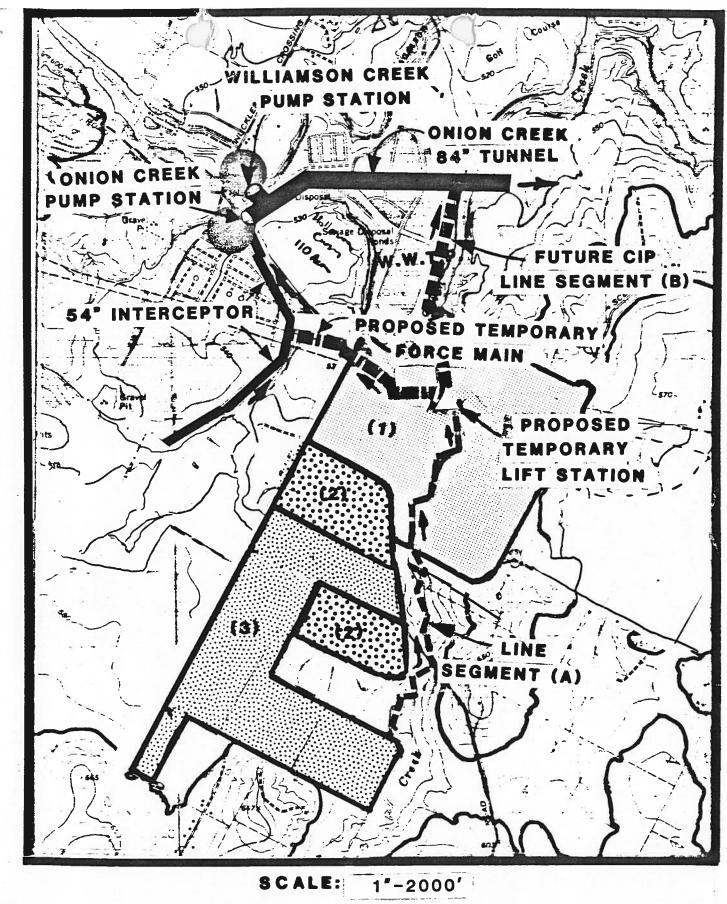


NOT TO SCALE

NORTH



APPROACH MAIN NUMBER- WW. # 1017
APPROACH MAIN NAME- SPRINGFIELD SUBDIVISION



NORTH

4

(1) SPRINGFIELD (2) MARBLE CREEK

(3) THE BEND AT NUCKOLS CROSSING