

**SITE PLAN REVIEW SHEET  
ENVIRONMENTAL VARIANCE REQUEST ONLY**

**CASE:** SP-2019-0109C(R1)

**ZAP COMMISSION DATE:** March 29<sup>th</sup>, 2022

**PROJECT NAME:** Water Oak Apartments

**OWNER/DEVELOPER:** Three Hills Land LLC  
(Tracey Merino) 512-374-2920

**AGENT:** Jones Carter  
(Gemsong Ryan) 512-441-9493

**ADDRESS OF SITE:** 12151 S I-35 Frontage Rd, Austin, TX 78747

**COUNTY:** Travis

**AREA:** 17.6 acres

**WATERSHED:** Onion Creek

**JURISDICTION:** Full purpose

**EXISTING ZONING:** MF-4

**CITY COUNCIL DISTRICT:** 5

**PROPOSED DEVELOPMENT:** Multi-family apartments

**DESCRIPTION OF VARIANCE:**

The applicant requests the following:

Request to vary from LDC 25-8-342 to allow fill to 25 feet to construct a driveway.

**STAFF RECOMMENDATION:**

Staff does not recommend this variance.

**ENVIRONMENTAL BOARD ACTION:**

**02/03/2022:** The Environmental Board voted (7) favor, (1) against, (1) absentia to recommend the variance request.

**ENVIRONMENTAL REVIEW STAFF:**

Pamela Abee-Tauli

**PHONE:** 512-974-1879

**CASE MANAGER:** Rosemary Avila

**PHONE:** 512-974-2784



**ENVIRONMENTAL COMMISSION MOTION 20220302 004c**

**Date:** March 2, 2022

**Subject:** Water Oak Apartments, SP-2019-0109C

**Motion by:** Jennifer Bristol

**Seconded by:** Perry Bedford

**RATIONALE:**

**WHEREAS**, the Environmental Commission recognizes the applicant is requesting to vary from LDC 25-8-342 to allow fill to 25 feet to construct a driveway.

**WHEREAS**, the Environmental Commission recognizes the site is located in the Onion Creek Watershed, Suburban Classification, Desired Development Zone, with no critical environmental features; and

**WHEREAS**, the Environmental Commission recognizes that staff does not recommend this variance having determined the required Findings of Fact have not been met. With that in mind, the Environmental Commission does recommend the variance.

**THEREFORE**, the Environmental Commission recommends the variance requested with the comment that City staff work collaboratively to ensure this situation does not occur in the future.

**VOTE 7-1**

For: Bedford, Qureshi, Aguirre, Brimer, Barrett Bixler, Ramberg, Bristol

Against: Thompson

Recuse: None

Absent: Scott

Approved By:

Kevin Ramberg, Environmental Commission Chair



Development Services Department  
Staff Recommendations Concerning Required Findings

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Project Name: Water Oak Apartments  
 Ordinance Standard: Watershed Protection Ordinance  
 Variance Request: Request to vary from LDC 25-8-342 to allow fill to 25 feet to construct a driveway.

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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.

Yes The Land Development Code provides the ability for public roadways to exceed 4 feet of cut and fill within the existing right of way. Originally, the concept for this roadway was to build the road to public standard and then dedicate the roadway as public. Therefore, the grading meets the requirements for a public roadway. However, due to the design of the retaining walls required to contain the fill, the Public Works Department is unable to accept the roadway as a public ROW. Private roadways are not allowed to exceed 4 feet of cut and fill. This is why the variance is required.

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 The variance is necessitated by the construction method chosen by the applicant. The depth and quantity of fill is due to the applicant's decision to fill rather than span the more than twenty (20) feet of grade change of the swale.

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

No The property is a seven-lot, 58.4 acre subdivision with 40.9 acres platted for multi-family development. The code

requirements do not deprive the owner of reasonable use of the property.

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

Yes The roadway as designed has already been permitted with full, appropriate environmental controls for both during and after construction.

- 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 roadway has already been constructed and is being treated by approved water quality facilities that have also already been constructed.

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;  
NA
- 2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property;  
NA
- 3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.  
NA

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

Environmental Reviewer (DSD)  Date 2/22/2022

\_\_\_\_\_  
(Pamela Abee-Taulli)

Environmental Review Manager (DSD)  Date 2/22/2022

\_\_\_\_\_  
(Mike McDougal)

Deputy Environmental Officer (WPD)  Date 02/23/2022

\_\_\_\_\_  
(Liz Johnston)

January 25, 2022

Pamela Abee-Tualli, LEED, CPESC  
COA Development Services Department  
6310 Wilhelmina Delco Drive  
Austin, Texas 78752

Re: Fill Variance  
Water Oak Apartments  
12234 Heatherly Drive  
Austin, Texas 78747  
SP-2019-0109C(R1)

Dear Ms. Abee-Tualli:

On behalf of our client, Three Hills Land LLC, Jones & Carter, Inc. is requesting an Environmental Commission variance of LDC Section 25-8-342(A)(4)(C) from the greater than 4-foot fill restriction on slopes over 15%. The site plan consists of 17.599 acres including 14 multi-family buildings and a clubhouse with surface parking and associated improvements and the public right-of-way (ROW) improvements for Heatherly Drive.

During project construction, the Public Works Department (PWD) reviewed the structural details for the retaining walls at the ROW and stated they did not want to maintain the retaining walls as permitted and requested the public ROW be converted to private roadways. Several coordination meetings between COA departments occurred and a variance to LDC Section 25-8-342(A)(4)(C) will be required for private roadways.

The entire project proposes 41.8% impervious cover with 60% allowed by watershed. The platted public ROW area is 4.8 acres with 0.11 acres in areas of over 15% natural slopes (or 2.2% of the ROW). The public ROW was located to comply with the TIA which required two public tie-in locations to the IH 35 NB Service Road as well as the topography of the site to locate Heatherly Drive along the high ridge around the site. There is also a small drainage swale that crosses the site from south to north that has a minimal area of offsite drainage (8 acres) that bisects the site and public ROW. The site plan includes an inline detention pond on the drainage swale that received a cut variance for slopes over 15% at time of permitting. The public ROW was also located to avoid any heritage trees and as many protected trees as possible.

The footings for the retaining walls have already been constructed based on an approved site plan correction but after several months of coordinating with PWD, DSD, ATD and other relevant COA staff, PWD has requested we convert the public ROW to private roadways to finish construction on the walls. With the private roadways, we will now require a site plan variance to LDC Section 25-8-342(A)(4)(C) and respectfully request Commission approval since the construction has already commenced and the variance was at the request of the COA PWD. If the environmental variance request is denied, then the road will have to remain public ROW (w/ a license agreement for the walls). In this case the fill will remain. Therefore, there will absolutely no difference in what is ultimately constructed other than the Public/Private designation of the roadway.



City of Austin  
Page 2  
January 25, 2022

In summary:

- The environmental variance is required to convert Heatherly Drive from public ROW to a private road (as desired by Public Works). This is the sole reason for the variance request.
- This is a previously permitted project and the majority of the construction is complete.
- DSD has previously processed the approvals of our plat, site development permits, and retaining wall details. We were told directly by DSD staff that Public Works has reviewed/approved the plans when we began construction. Public Works then halted construction and requested a revision to the approved site plans.
- The design decisions noted below were made prior to our awareness that Public Works had not approved the plans. Therefore, would be forced to tear down what has already been constructed based on design decisions made when we were told we had all the necessary approvals.
- A bridge for the Public ROW would require us to tear out already constructed improvements and would also require approval from Public Works. Given Public Works desire to not maintain this road we feel like approval of a bridge is unlikely and not possible.
- The location of the road (which requires the fill) was driven by TXDoT, ATD, and DSD requirements for our driveway locations along I-35 as well as approved TIA requirements for improvements.
- We originally proposed an embankment on either side of Heatherly Drive. This was not allowed by environmental review staff due to cut/fill requirements outside of Public ROW. The single large walls were discussed and approved in meeting, calls, and plan review by ATD and DSD Environmental staff prior to issue of our site permit.

If you have any questions or require additional information, please contact me at (512) 441-9493.

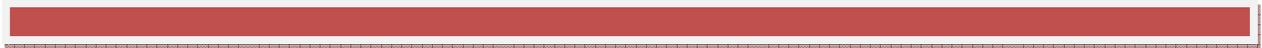
Sincerely,

A handwritten signature in blue ink that reads 'Gemsong N. Ryan'.

Gemsong N. Ryan, P.E.  
Vice-President Land Development



## ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM



### PROJECT DESCRIPTION

#### Applicant Contact Information

Name of Applicant	Gemsong N. Ryan, P.E.
Street Address	3100 Alvin Devane Blvd Suite 150
City State ZIP Code	Austin, Texas 78741
Work Phone	512-685-5131
E-Mail Address	gryan@jonescarter.com

#### Variance Case Information

Case Name	Water Oak Apartments
Case Number	SP-2019-0109C(R1)
Address or Location	12234 Heatherly Drive
Environmental Reviewer Name	Pamela Abee-Taulli
Environmental Resource Management Reviewer Name	N/A
Applicable Ordinance	Watershed Protection Ordinance
Watershed Name	Onion Creek
Watershed Classification	<input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input type="checkbox"/> Water Supply Rural <input type="checkbox"/> Barton Springs Zone

Edwards Aquifer Recharge Zone	<input type="checkbox"/> Barton Springs Segment <input type="checkbox"/> Northern Edwards Segment <input checked="" type="checkbox"/> Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Distance to Nearest Classified Waterway	Approx. 1200 LF
Water and Waste Water service to be provided by	Austin Water Utility
Request	<p>The variance request is as follows (Cite code references):</p> <p>A variance is requested from LDC 25-8—342 (A)(4)(C) to fill greater than 4 feet on a 15% or greater slope.</p>

Impervious cover	Existing	Proposed
square footage:	<u>0</u>	<u>320,340</u>
acreage:	<u>0</u>	<u>7.35</u>
percentage:	<u>0%</u>	<u>41.8%</u>
Provide general description of the property (slope range, elevation range, summary of vegetation / trees, summary of the geology, CWQZ, WQTZ, CEFs, floodplain, heritage trees, any other notable or outstanding characteristics of the property)	<p>The existing topography of the subject tract consists of natural slopes ranging from 1%-20%. The site contains portions that are in excess of 15% slope. The highest point of the site is located along the southern boundary at an elevation of 722 feet above sea level. The lowest point of the site is located at the north-eastern corner of the site at an elevation of approximately 663 feet above sea level. The site is currently under construction with a revision to the plans in review. There is a small swale in the center of the Water Oak Apartments site plan. According to the Natural Resource Conservation Soil Survey of Travis County, Texas, soils on the property are classified in 99.9% in Hydrologic Soil Group D and 0.1% in Hydrologic Soil Group D. The soils are predominantly Brackett-Rock outcrop complex, with 1-12% slopes and Heiden clay, with 5-8% slopes. The site is located in the Onion Creek Watershed which is classified as a suburban watershed. There are several heritage trees on site, but the only one being removed was classified as dead by an arborist and not in the proposed ROW/paving area.</p>	

<p>Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)</p>	<p>More than 4 feet of fill on slopes greater than 15% is required to fill under a proposed private roadway in order to comply with TxDOT requirements on driveway locations and TCM requirements for roadway design. The additional fill is necessary to build the required roadway and is located to follow the high ridge around the site to minimize site disturbance. Summary of why variance is now required is below:</p> <ul style="list-style-type: none"> <li>• The environmental variance is required to convert Heatherly Drive from public ROW to a private road (as desired by Public Works). This is the sole reason for the variance request.</li> <li>• This is a previously permitted project and the majority of the construction is already complete.</li> <li>• DSD has previously processed the approvals of our plat, site development permits, and retaining wall details. We were told directly by DSD staff that Public Works has reviewed/approved the plans when we began construction. Public Works then halted construction and requested a revision to the approved site plans.</li> <li>• The design decisions noted below were made prior to our awareness that Public Works had not approved the plans. Therefore, we would be forced to tear down what has already been constructed based on design decisions made when we were told we had all the necessary approvals.</li> <li>• A bridge for the Public ROW would require us to tear out already constructed improvements and would also require approval from Public Works. Given Public Works desire to not maintain this road we feel like approval of a bridge is unlikely and not possible.</li> <li>• The location of the road (which requires the fill) was driven by TXDoT, ATD, and DSD requirements for our roadway locations along I-35 as well as approved TIA requirements for improvements.</li> <li>• We originally proposed an embankment on either side of Heatherly Drive. This was not allowed by environmental review staff due to cut/fill requirements outside of Public ROW. The single large walls were discussed and approved in meeting, calls, and plan review by ATD and DSD Environmental staff prior to issue of our site permit.</li> </ul>

## 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: Water Oak Apartments

Ordinance: LDC 25-8-342 (A)(4)(C)

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 / No      The only possible location for this roadway to access all lots in the projects is along the ridge around the site and for it to tie-in to TxDOT required locations. The drainage swale bisects the site from north to south (which are the areas of >15% slopes) and there is no way to avoid crossing the swale with the public to private roadway system.

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;

Yes / No      We are following the highest ridge around the site and have tie-in locations designated by TxDOT. To comply with TCM on roadway vertical curve design as well as avoid heritage trees and protected trees, there is no other location for the public/private roadway to access all lots in the project.

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

Yes / No      We are only requesting fill over 4 feet on 15% or greater slopes on 0.11 acres or approximately 2.2% of the total public/private roadway area.

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

Yes / No      We have retaining walls to avoid filling into more areas outside of the roadway area and are limiting the fill to directly under the public/private roadway only.

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

Yes / No      Water quality is provided upstream of the detention pond and rain gardens are located all along the roadway to fully treat the impervious cover.

- 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):

1. The criteria for granting a variance in Subsection (A) are met;

Yes / No      N/A

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

Yes / No      N/A

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

Yes / No      N/A

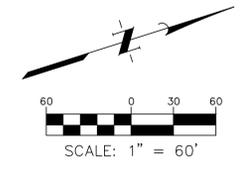
\*\*Variance approval requires all above affirmative findings.



## Exhibits for Commission Variance

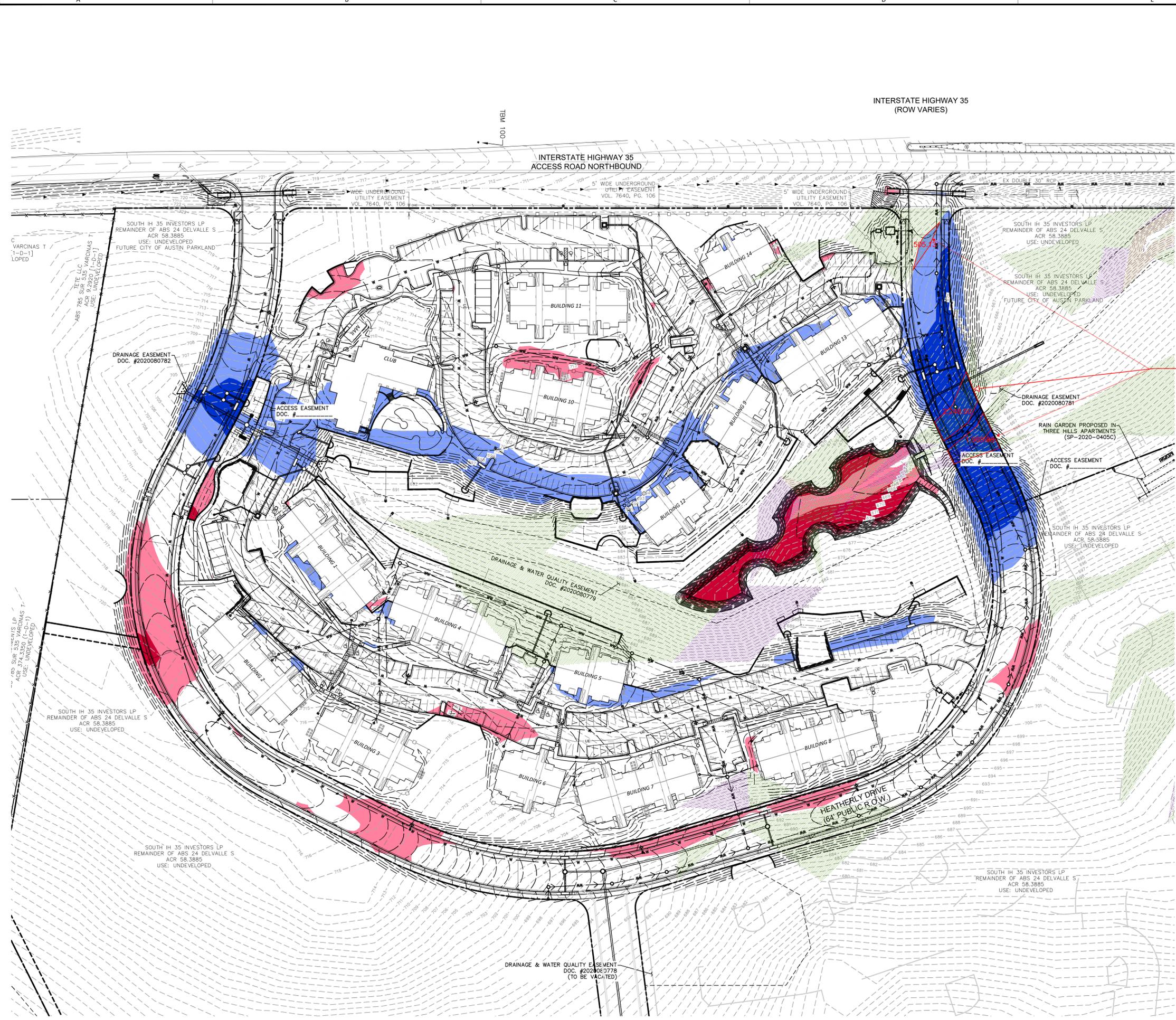
- Aerial photos of the site
- Site photos
- Aerial photos of the vicinity
- Context Map—A map illustrating the subject property in relation to developments in the vicinity to include nearby major streets and waterways
- Topographic Map - A topographic map is recommended if a significant grade change on the subject site exists or if there is a significant difference in grade in relation to adjacent properties.
- For cut/fill variances, a plan sheet showing areas and depth of cut/fill with topographic elevations.
- Site plan showing existing conditions if development exists currently on the property
- Proposed Site Plan- full size electronic or at least legible 11x17 showing proposed development, include tree survey if required as part of site or subdivision plan
- Environmental Map – A map that shows pertinent features including Floodplain, CWQZ, WQTZ, CEFs, Setbacks, Recharge Zone, etc.
- An Environmental Resource Inventory pursuant to ECM 1.3.0 (*[if required by 25-8-121](#)*)
- Applicant’s variance request letter

THE LOCATION OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. HE AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY OCCUR BY HIS FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.



INTERSTATE HIGHWAY 35  
(ROW VARIES)

INTERSTATE HIGHWAY 35  
ACCESS ROAD NORTHBOUND



0.11 Acres Fill  
Over 4' in 15%  
Slope Zone

- CUT/FILL**
- 8'+ CUT
  - 4'-8' CUT
  - 4'-8' FILL
  - 8'+ FILL
- SLOPES**
- 35+%
  - 25%-35%
  - 15%-25%

SITE PLAN APPROVAL SHEET        OF 149  
 FILE NUMBER: SP-2019-0109C APPLICATION DATE: MARCH 12, 2019  
 APPROVED BY COMMISSION ON UNDER SECTION 112 OF  
 CHAPTER 25-5 OF THE CITY OF AUSTIN CODE  
 EXPIRATION DATE (25-5-61, LDC) CASE MANAGER J. Sillala  
 PROJECT EXPIRATION DATE (ORD.#970905-A) DWFPZ DDZ

Director, Development Services Department  
 RELEASED FOR GENERAL COMPLIANCE: ZONING: MF-4  
 Rev. 1 \_\_\_\_\_ Correction 1 \_\_\_\_\_  
 Rev. 2 \_\_\_\_\_ Correction 2 \_\_\_\_\_  
 Rev. 3 \_\_\_\_\_ Correction 3 \_\_\_\_\_

*Final plat must be recorded by the Project Expiration Date, if applicable. Subsequent Site Plans which do not comply with the Code current at the time of filing, and all required Building Permits and/or a notice of construction (if a building permit is not required), must also be approved prior to the Project Expiration Date.*

No.	Date	REVISIONS

**JONES CARTER**  
 Texas Board of Professional Engineers Registration No. F-439  
 3100 Avon Avenue Boulevard, Suite 150 • Austin, Texas 78741 • 512.441.9493

SCALE: AS SHOWN DESIGNED BY: NZ  
 DATE: MARCH 12, 2019 CHECKED BY: GMR  
 JOB NO.: 04836-0005 DRAWN BY: SH



Three Hills Land LLC  
**THREE HILLS APARTMENTS - PHASE ONE**  
**CUTFILL EXHIBIT**

SHEET NO. **1**  
 OF 1

SP-2019-0109C