

A U S T I N C I T Y C O U N C I L
AGENDA

Thursday, May 25, 2006

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Item # 4 / 17

**Neighborhood Planning & Zoning
RECOMMENDATION FOR COUNCIL ACTION**

Subject: Approve an Interlocal Agreement regarding the release of approximately 425 acres of Austin extraterritorial jurisdiction to the jurisdiction of the City of Lakeway. The area is located north of SH 71, approximately two miles west of FM 620.

Amount and Source of Funding: (No fiscal impact.)

Additional Backup Material

(click to open)

- ☐ Staff Report
- ☐ Interlocal with Maps
- ☐ Restrictive Covenant
- ☐ Lakeway ETJ Release-
Complete Analysis

For More Information:

STAFF REPORT

Release of approximately 425 acres to the jurisdiction of the City of Lakeway

The area is located in Travis County west of the Village of Bee Cave, north of State Highway 71 and west of the intersection of State Highway 71 and Hamilton Pool Road. The proposed ETJ release area has minimal annexation potential and future service constraints due to its geographic location and physical impediments and this release should be made contingent on encumbering the property with restrictions agreeable to all parties that would mirror regulations in place prior to the release. The release is recommended as a continuing process in regional coordination and cooperation with our neighboring cities and are the product of several months of discussions and meetings with officials from Lakeway.

The city's primary interest in retaining this ETJ has been enforcement of its water quality ordinances. The City of Austin's watershed regulations are more stringent in almost every respect than Lakeway's regulations. In response to previous requests for ETJ releases, the City has released ETJ conditioned on the execution of restrictive covenants by property owners and interlocal agreements with the receiving cities subjecting the released territory to water quality related development standards similar to what is required under the City's regulations.

Lakeway and the property owner's representative have indicated that the owner is willing to include additional environmental protections for the Lakeway Release Area through a restrictive covenant and Lakeway has agreed to apply and enforce the Development and Water Quality Regulations within the area as described in the Interlocal Agreement between Austin and Lakeway. In addition to Lakeway's Development Ordinance, development in the release area will comply with the following:

- (1) **Impervious Cover.** Total impervious cover placed or constructed on the Property shall not exceed twenty seven and one-half percent (27.5%) of the gross site area.
- (2) **Construction on Slopes.** Construction on slopes shall be in accordance with sub-chapters 25-8-301, 25-8-302 and 25-8-303 of the City of Austin's Land Development Code.
- (3) **Water Quality Control Measures.** Developments shall use stormwater controls as good as or better than those required by the City of Austin in the Water Supply Rural Watersheds, except that they shall be
 - a) required for all development regardless of type whenever the impervious cover for the area draining to the pond exceeds twelve percent (12%) gross site area, and
 - b) designed to capture the one year, three hour storm and release it over a minimum of 24 hours.
- (4) **Stream Buffers.** Stream buffers shall remain free of construction, development and other alterations except for utility or roadway crossings. The number of crossings through buffers should be minimized according to guidance found in the LCRA's Technical Manual (4th Edition, 2006). Stormwater treatment facilities, golf courses or wastewater irrigation shall not be located in the stream buffers. Stormwater discharge from the development shall be returned to overland flow before reaching the stream buffer.
Streams shall be buffered as follows:
 - a) Creeks or swales draining less than 128 acres but more than 32 acres shall have a minimum stream buffer width of 75 feet from the centerline on each side of the creek or swale for a total width of 150 feet.

b) Creeks or swales draining less than 320 acres but more than 128 acres shall have a minimum stream buffer width of 100 feet from the centerline on each side of the creek or swale for a total width of 200 feet.

c) Creeks or swales draining more than 320 acres shall have a minimum stream buffer width of 200 feet from the centerline on each side of the creek or swale for a total width of 400 feet.

(5) **Critical Environmental Features.** Critical environmental features shall be protected according the criteria found in sub-chapters 25-8-281 and 25-8-282 of the City of Austin's Land Development Code

INTERLOCAL COOPERATION AGREEMENT

This Interlocal Cooperation Agreement ("Agreement") is made and entered into effective as of the date of execution by authorized representatives of the parties, by and between the City of Austin, Texas ("Austin"), a Texas home rule municipal corporation, and the City of Lakeway, Texas ("Lakeway"), a Texas home rule municipal corporation, acting by and through their authorized representatives.

Recitals.

Whereas, Austin and Lakeway (sometimes hereinafter collectively referred to as the "cities" or "parties") recognize that both the public interest and good government are best served by long-term, mutually cooperative relationships between neighboring cities; and

Whereas, agreements that establish boundaries within which specific duties are performed and standards applied in a convenient and cost effective manner to assure quality urban planning and development serve the best interests of all citizens; and

Whereas, agreement regarding areas adjacent to the cities' respective corporate limits or extraterritorial jurisdiction ("ETJ") will assist and enhance the planning and development of capital improvement programs and services, and result in meaningful protection for the environment and valuable natural resources; and

Whereas, this Agreement will accomplish legitimate public purposes of both cities and will permit dependable urban planning that will benefit the environment and the public health, safety and welfare of our respective present and future citizens; and

Whereas, the Owners and Lakeway have requested that Austin release that portion of Austin's ETJ which is approximately 425 acres as identified in Exhibit "A" as (the "Lakeway Release Area"), so that the entire 456.63 acre Heard Ranch described in Exhibit "B" ("Entire Property") will be in Lakeway's ETJ and can be annexed into the Lakeway city limits and Austin has agreed to release this ETJ as set out in this Agreement; and

Whereas, after the ETJ release contemplated by this Agreement has been completed, Lakeway will be responsible for approval of subdivisions and public and private construction improvements within that area;

NOW, THEREFORE, pursuant to Chapter 791, Texas Government Code, and Section 212.007, Texas Local Government Code, and as otherwise authorized and permitted by the City Charter of Austin and the laws of the State of Texas, for and in consideration of the covenants, conditions and undertakings hereinafter described, and the benefits to accrue to the citizens of the cities, and subject to each and every term and condition of this Agreement, the parties contract, covenant and agree as follows:

Article One Findings and Declarations.

Section 1.1. Fact Findings. The recitals above are adopted as findings by the governing bodies of Austin and Lakeway, and are incorporated herein for all purposes. The governing bodies of Austin and Lakeway have authorized and approved this Agreement.

Section 1.2. Water Protection Requirements. The application and enforcement of the Development and Water Quality Regulations within the Lakeway Release Area, as those terms are hereinafter defined, are reasonable and necessary for the preservation and protection of water quality, the watersheds of both Lakeway and Austin, and valuable natural resources.

Article Two Term and Nature of Agreement.

Section 2.1. Term of Agreement. The term of this Agreement shall commence on the date of signature by authorized representatives of both cities ("Effective Date").

Section 2.2. Intent and Purpose. The Intent and purpose of this Agreement is to provide for effective and efficient urban planning, the release of ETJ as set out in this Agreement, and that Lakeway shall be responsible for application and enforcement of the Development and Water Quality Regulations within the Entire Property, as more particularly described in Section 4.1 (b) (the "Development and Water Quality Regulations") as requirements for the approval of subdivisions and land development in the Entire Property.

Section 2.3. Map. References in this Agreement to any geographic areas refer to the area named and shown on the Maps attached hereto as Exhibit "A" and Exhibit "B" and incorporated herein for all purposes.

Article Three Release of ETJ

Section 3.1 ETJ Release. The City of Austin will release to the City of Lakeway the portion of Austin ETJ shown on Exhibit A to this Agreement, and as more particularly described in Exhibit A. The release of ETJ will occur upon execution of this Agreement by both parties and such release is conditioned upon the area becoming a part of the City of Lakeway's ETJ and the application and enforcement of the Development and Water Quality Regulations for the approval of subdivisions and land development, as set forth herein, within the Entire Property.

Article Four Review and Approval of Subdivision Applications and Construction

Section 4.1. Subdivision and Construction Review and Approval. Upon release of ETJ in accordance with Section 3.1, Lakeway will provide urban planning and will enforce the following requirements within the Entire Property, will review, provide oversight and inspect subdivisions and land development within the Entire Property, and will only approve subdivisions and land developments in the Entire Property that are in compliance with the following requirements:

(a) Application and enforcement of the Lakeway Development Ordinance.

(b) The Development and Water Quality Regulations, as follows:

(1) Impervious Cover. Total impervious cover placed or constructed on the Entire Property shall not exceed twenty seven and one-half percent (27.5%) of the gross site area.

(2) Construction on Slopes. Construction on slopes shall be in accordance with sub-chapters 25-8-301, 25-8-302 and 25-8-303 of the City of Austin's Land Development Code; as follows:

25-8-301

(A) A person may not construct a roadway or driveway on a slope with a gradient of more than 15 percent unless the construction is necessary to provide primary access to: (1) at least two contiguous acres with a gradient of 15 percent or less; or (2) building sites for at least five residential units.

(B) For construction described in this section, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33 percent, stabilized with a permanent structure. This does not apply to a stable cut.

25-8-302

(A) A person may not construct: (1) a building or parking structure on a slope with a gradient of more than 25 percent; or (2) except for a parking structure, a parking area on a slope with a gradient of more than 15 percent.

(B) A person may construct a building or parking structure on a slope with a gradient of more than 15 percent and not more than 25 percent if the requirements of this subsection are met. (1) Impervious cover on slopes with a gradient of more than 15 percent may not exceed 10 percent of the total area of the slopes. (2) The terracing techniques described in the City of Austin's Environmental Criteria Manual are required for construction that is uphill or downhill of a slope with a gradient of more than 15 percent. (3) Hillside vegetation may not be disturbed except as necessary for construction, and disturbed areas must be restored with native vegetation. (4) For construction described in this section, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33

percent, stabilized with a permanent structure. This does not apply to a stable cut.

25-8-303

(A) A preliminary subdivision plan that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plan note identifying the lot and describing the requirements of Subsection (B).

(B) A final plat that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plat note: (1) identifying the lot; and (2) stating the impervious cover and construction requirements for the lot.

(3) Water Quality Control Measures. Developments shall use stormwater controls as good as or better than those required by the City of Austin in the Water Supply Rural Watersheds, except that they shall be

a) required for all development regardless of type whenever the impervious cover for the area draining to the pond exceeds twelve percent (12%) gross site area, and

b) designed to capture the one year, three hour storm and release it over a minimum of 24 hours.

This section is not intended to preclude the use of filtration/pollutant removal systems designed in accordance with the Lower Colorado River Authority Water Quality Control Technical Manual, dated February 1, 2006.

(4) Stream Buffers. Stream buffers shall remain free of construction, development and other alterations except for utility or roadway crossings. The number of crossings through buffers should be minimized according to guidance found in the LCRA's Technical Manual (4th Edition, 2006). Stormwater treatment facilities, golf courses or wastewater irrigation shall not be located in the stream buffers. Stormwater discharge from the development shall be returned to overland flow before reaching the stream buffer.

Streams shall be buffered as follows:

(a) Creeks or swales draining less than 128 acres but more than 32 acres shall have a minimum stream buffer width of 75 feet from the centerline on each side of the creek or swale for a total width of 150 feet.

(b) Creeks or swales draining less than 320 acres but more than 128 acres shall have a minimum stream buffer width of 100 feet from the centerline on each side of the creek or swale for a total width of 200 feet.

(c) Creeks or swales draining more than 320 acres shall have a minimum stream buffer width of 200 feet from the centerline on each side of the creek or swale for a total width of 400 feet.

(5) Critical Environmental Features. Critical environmental features shall be protected according to the criteria found in sub-chapters 25-8-281 and 25-8-282 of the City of Austin's Land Development Code.

25-8-281

(A) Drainage patterns for proposed development must be designed to protect critical environmental features from the effects of runoff from developed areas, and to maintain the catchment areas of recharge features in a natural state. Special controls must be used where necessary to avoid the effects of erosion, or sedimentation, or high rates of flow.

(B) A residential lot may not include a critical environmental feature or be located within 50 feet of a critical environmental feature.

(C) This subsection prescribes the requirements for critical environmental feature buffer zones. (1) A buffer zone is established around each critical environmental feature described in this subchapter. (a) Except as provided in Subsection (C)(1)(b), the width of the buffer zone is 150 feet from the edge of the critical environmental feature. (b) For a point recharge feature, the buffer zone coincides with the topographically defined catchment basin, except that the width of the buffer zone from the edge of the critical environmental feature is: (i) not less than 150 feet; and (ii) not more than 300 feet. (2) Within a buffer zone described in this subsection: (a) the natural vegetative cover must be retained to the maximum extent practicable; (b) construction is prohibited; and (c) wastewater disposal or irrigation is prohibited. (3) If located at least 50 feet from the edge of the critical environmental feature, the prohibition of Subsection (C)(2)(b) does not apply to: (a) a yard or hiking trail; or (b) a recharge basin approved under Section 25-8-213 (*Water Quality Control Standards*) of the City of Austin's Land Development Code that discharges to a point recharge feature.

(D) The City of Lakeway may grant an administrative variance to a requirement. An applicant for a variance must demonstrate that the proposed measures preserve all characteristics of the critical environmental feature.

25-8-282

(A) Wetlands must be protected in all watersheds except in the central business area.

(B) Protection methods for wetlands include: (1) appropriate setbacks that preserve the wetlands or wetland functions; (2) wetland mitigation, including wetland replacement; (3) wetland restoration or enhancement; or (4) use of a wetlands for water quality controls.

(C) The City of Lakeway may approve: (1) the removal and replacement of a wetland; or (2) the elimination of setbacks from a wetland that is

proposed to be used as a water quality control.

Section 4.2. Enforcement and Compliance. The standards, regulations and conditions set forth in this Agreement for the review and approval of development within the Entire Property shall be applied and enforced by Lakeway, its officers, employees, agents and representatives, in a manner consistent with the wording and intent of this Agreement. They shall remain development regulations and requirements of Lakeway within the Entire Property. If Lakeway contracts with Travis County, pursuant to *Chapter 242, Texas Local Government Code*, or otherwise, for Travis County to review and approve land development within Lakeway's ETJ, it shall be an event of default under this Agreement unless the standards and regulations set forth in this Agreement are applied and enforced in a manner consistent with the intent of this Agreement.

Article Five General and Miscellaneous.

Section 5.1. Development Approval and Policy Making Authority. Lakeway shall have exclusive responsibility for urban planning within the Entire Property that is consistent with this Agreement, and the approval of land development and subdivisions within the Entire Property in compliance with this Agreement. Lakeway shall further have control, supervision and policy making authority for and with respect to city services and future services within the Entire Property, to the fullest extent authorized by State law and not inconsistent with this Agreement. When applying this Agreement, Lakeway shall consider the Entire Property as a whole for purposes of meeting the terms of this Agreement.

Section 5.2. Jurisdiction. This Agreement shall not be deemed to extend or increase the jurisdiction or authority of either of the cities except as necessary to implement and give effect to this Agreement. All governmental and proprietary functions and services to be performed and provided by Lakeway within the Entire Property shall, except as provided otherwise by State law and in this Agreement, be and remain in the sole discretion of Lakeway. Nothing in this Agreement shall be deemed to be applicable to, or an attempt to limit or restrict, the legal rights, authority or jurisdiction of any other governmental entity.

Section 5.3. Other Services. Nothing in this Agreement shall be deemed to create, by implication or otherwise, any duty or responsibility of either of the cities to undertake any other action or to provide any service within the Entire Property, except as specifically set forth in this Agreement.

Section 5.4. Governmental Immunity. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either of the cities nor to create any legal rights or claims on behalf of any third party. Neither Austin nor Lakeway waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas.

Section 5.5. Amendments and Modifications. This Agreement may not be amended

or modified except in writing executed by both Austin and Lakeway and authorized by their respective governing bodies.

Section 5.6. Exhibits. The following exhibits are incorporated into this Agreement by reference as if fully set out herein:

- Exhibit "A": Map and Property Description of the Lakeway Release Area
- Exhibit "B": Map and Property Description of the Entire Property

Section 5.7. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the parties hereto shall be construed and enforced in accordance therewith. The parties hereto acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is their desire and intention that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, be deemed to be validated and enforceable.

Section 5.8. Gender, Number and Headings. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings and section numbers are for convenience only and shall not be considered in interpreting or construing this Agreement.

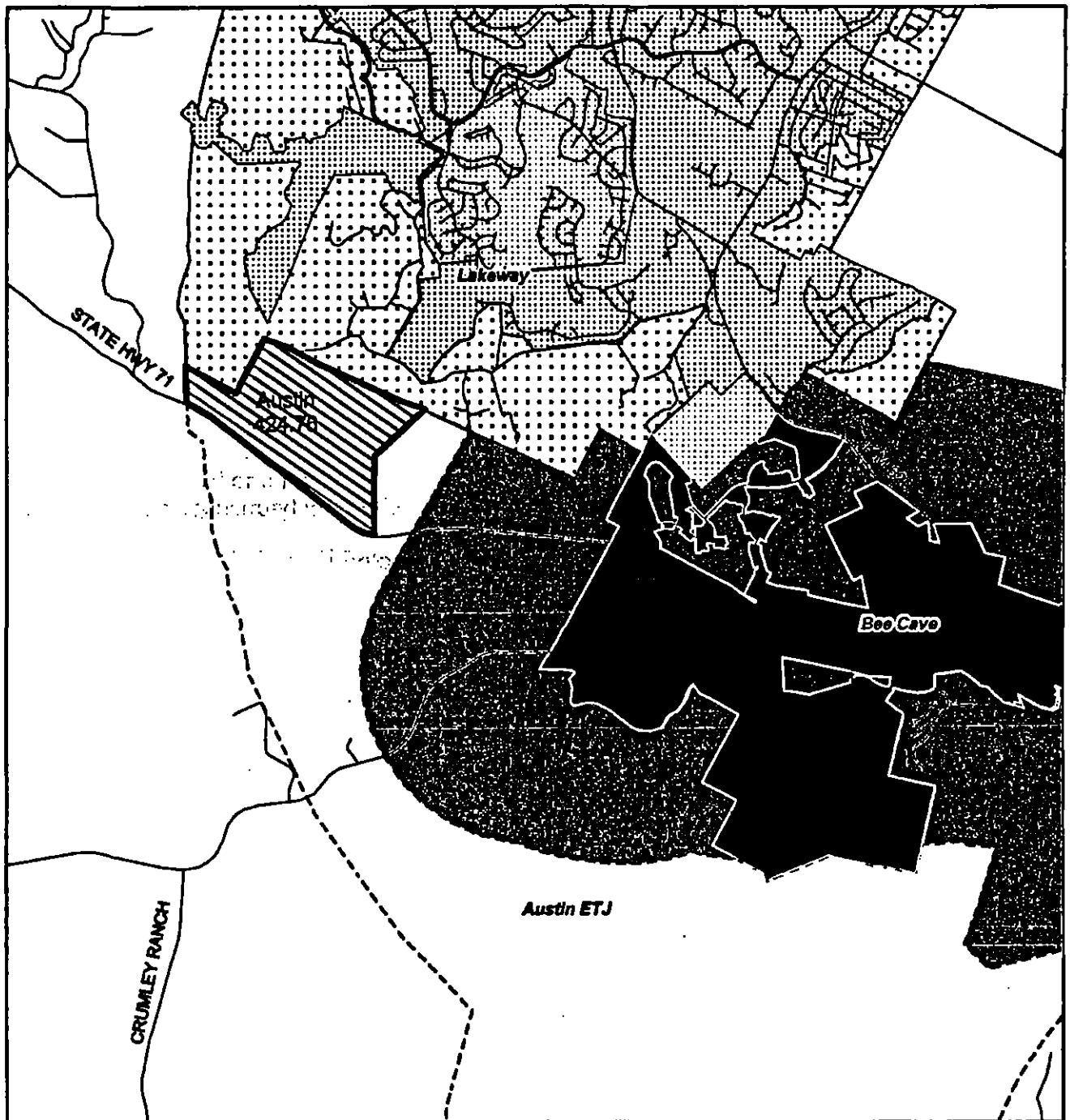
Section 5.9. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall be considered fully executed when all parties have executed an identical counterpart, notwithstanding that all signatures may not appear on the same counterpart.

IN WITNESS WHEREOF, the authorized representatives of the Cities have executed this Agreement.

City of Austin, Texas

City of Lakeway, Texas

Date: _____	Date: _____
Toby Hammett Futrell, City Manager	Steve Swan, Mayor



City of Austin ETJ Release to the City of Lakeway
Exhibit A to the Interlocal Agreement

0 0.5 1 Miles

Heard Tract +/- 425 acres

Legend



424.76 acre Release to Lakeway



Lakeway



Lakeway ETJ



Austin ETJ



Bee Cave

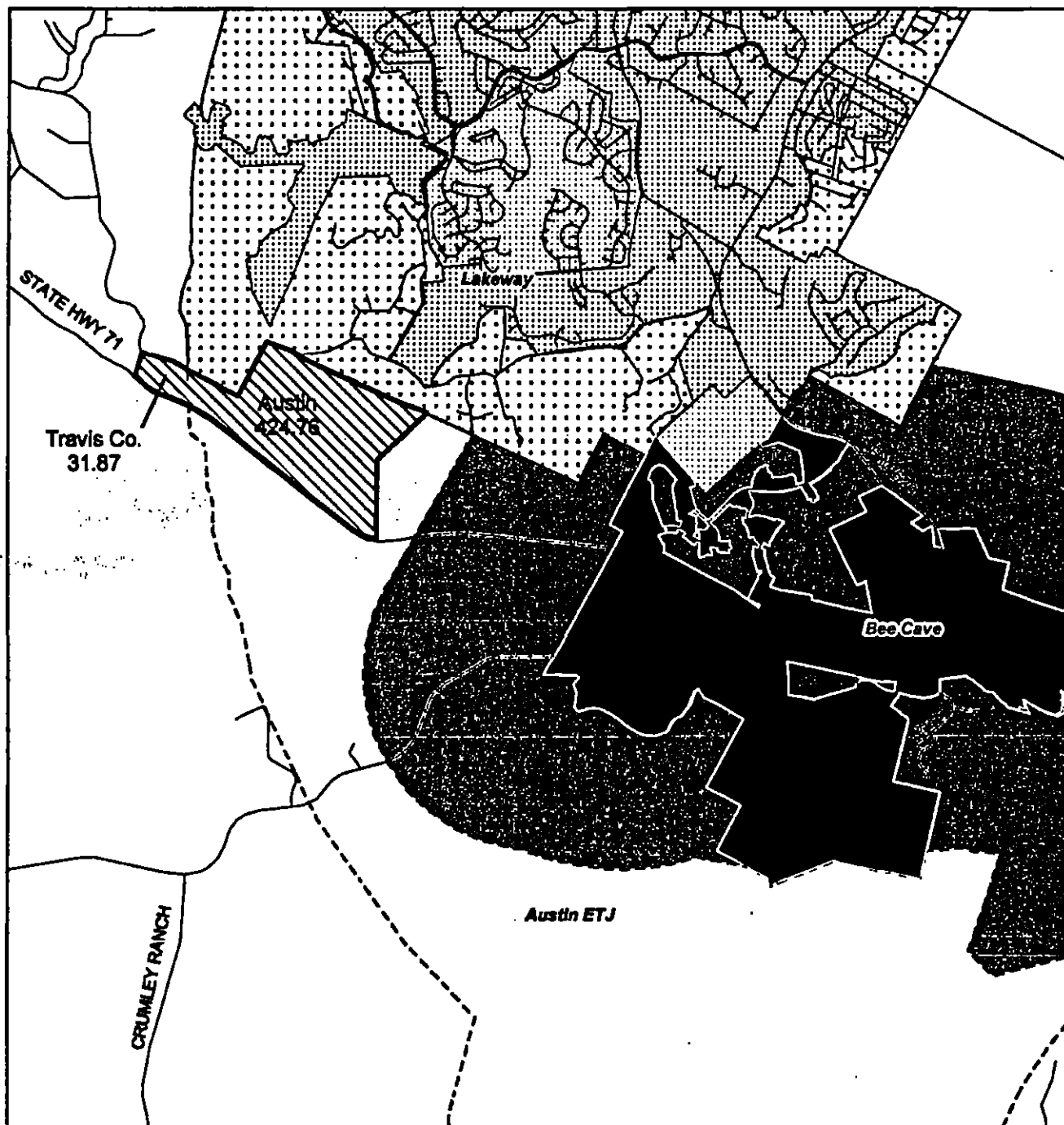


Bee Cave ETJ



City of Austin
 NPZD
 April 7, 2006











City of Austin ETJ Release to the City of Lakeway
Exhibit B to the Interlocal Agreement

0 0.5 1 Miles

Entire Heard Property +/- 457 acres

Legend

-  Entire Heard Property
-  Lakeway
-  Lakeway ETJ

-  Austin ETJ
-  Bee Cave
-  Bee Cave ETJ



City of Austin
 NPZD
 April 7, 2006



DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS

COUNTY OF TRAVIS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made on this 5 day of April, 2006 by James Power Heard, Jr., Mark Francis Heard, Brian Patrick Heard, Philip John Heard and Paul Bower Heard, hereinafter referred to as "Declarant".

WHEREAS, Declarant is the fee simple owner of a 456.63 acre tract of land described in Exhibit "A" (the "Property"), of which approximately 425 acres described in Exhibit "B" (the "Lakeway Release Area") is currently within the City of Austin's ETJ and

WHEREAS, Declarant has requested that the Lakeway Release Area be transferred from the extraterritorial jurisdiction of the City of Austin to the extraterritorial jurisdiction of the "City of Lakeway," and has agreed to subject the Property to certain covenants, conditions and restrictions as more specifically set forth in this Declaration;

NOW THEREFORE, in consideration of the release of the Lakeway Release Area from the City of Austin's extraterritorial jurisdiction, and intending to bind itself, its assigns and successors and all other persons hereafter having an interest in the Property the Declarant does hereby declare, impose and subject the Property as follows:

1. Development and Water Quality Regulations. The Property shall be developed and/or maintained in accordance with each of the following:

(1) Impervious Cover. Total impervious cover placed or constructed on the Property shall not exceed twenty seven and one-half percent (27.5%) of the gross site area.

(2) Construction on Slopes. Construction on slopes shall be in accordance with sub-chapters 25-8-301, 25-8-302 and 25-8-303 of the City of Austin's Land Development Code.

25-8-301

(A) A person may not construct a roadway or driveway on a slope with a gradient of more than 15 percent unless the construction is necessary to provide primary access to: (1) at least two contiguous acres with a gradient of 15 percent or less; or (2) building sites for at least five residential units.

(B) For construction described in this section, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33

percent, stabilized with a permanent structure. This does not apply to a stable cut.

25-8-302

(A) A person may not construct: (1) a building or parking structure on a slope with a gradient of more than 25 percent; or (2) except for a parking structure, a parking area on a slope with a gradient of more than 15 percent.

(B) A person may construct a building or parking structure on a slope with a gradient of more than 15 percent and not more than 25 percent if the requirements of this subsection are met. (1) Impervious cover on slopes with a gradient of more than 15 percent may not exceed 10 percent of the total area of the slopes. (2) The terracing techniques described in the City of Austin's Environmental Criteria Manual are required for construction that is uphill or downhill of a slope with a gradient of more than 15 percent. (3) Hillside vegetation may not be disturbed except as necessary for construction, and disturbed areas must be restored with native vegetation. (4) For construction described in this section, a cut or fill must be revegetated, or if a cut or fill has a finished gradient of more than 33 percent, stabilized with a permanent structure. This does not apply to a stable cut.

25-8-303

(A) A preliminary subdivision plan that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plan note identifying the lot and describing the requirements of Subsection (B).

(B) A final plat that proposes a single family residential lot on a slope with a gradient of more than 15 percent must include a plat note: (1) identifying the lot; and (2) stating the impervious cover and construction requirements for the lot.

(3) **Water Quality Control Measures.** Developments shall use stormwater controls as good as or better than those required by the City of Austin in the Water Supply Rural Watersheds, except that they shall be: (A) required for all development regardless of type whenever the impervious cover for the area draining to the pond exceeds twelve percent (12%) gross site area, and (B) designed to capture the one year, three hour storm and release it over a minimum of 24 hours.

This section is not intended to preclude the use of filtration/pollutant removal systems designed in accordance with the Lower Colorado River Authority Water Quality Control Technical Manual, dated February 1, 2006.

(4) **Stream Buffers.** Stream buffers shall remain free of construction, development and other alterations except for utility or roadway crossings. The

number of crossings through buffers should be minimized according to guidance found in the LCRA's Technical Manual. Stormwater treatment facilities, golf courses or wastewater irrigation shall not be located in the stream buffers. Stormwater discharge from the development shall be returned to overland flow before reaching the stream buffer.

Streams shall be buffered as follows:

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(5) Critical Environmental Features. Critical environmental features shall be protected according the criteria found in sub-chapters 25-8-281 and 25-8-282 of the City of Austin's Land Development Code, as set out below.

25-8-281

(A) Drainage patterns for proposed development must be designed to protect critical environmental features from the effects of runoff from developed areas, and to maintain the catchment areas of recharge features in a natural state. Special controls must be used where necessary to avoid the effects of erosion, or sedimentation, or high rates of flow.

(B) A residential lot may not include a critical environmental feature or be located within 50 feet of a critical environmental feature.

(C) This subsection prescribes the requirements for critical environmental feature buffer zones. (1) A buffer zone is established around each critical environmental feature described in this subchapter. (a) Except as provided in Subsection (C)(1)(b), the width of the buffer zone is 150 feet from the edge of the critical environmental feature. (b) For a point recharge feature, the buffer zone coincides with the topographically defined catchment basin, except that the width of the buffer zone from the edge of the critical environmental feature is: (i) not less than 150 feet; and (ii) not more than 300 feet. (2) Within a buffer zone described in this subsection: (a) the natural vegetative cover must be retained to the maximum extent practicable; (b) construction is prohibited; and (c) wastewater disposal or irrigation is prohibited. (3) If located at least 50 feet from the edge of the critical environmental feature, the prohibition of Subsection (C)(2)(b) does not apply to: (a) a yard or hiking trail; or (b) a recharge basin approved

under Section 25-8-213 (*Water Quality Control Standards*) of the City of Austin's Land Development Code that discharges to a point recharge feature.

(D) The City of Lakeway may grant an administrative variance to a requirement. An applicant for a variance must demonstrate that the proposed measures preserve all characteristics of the critical environmental feature.

25-8-282

(A) Wetlands must be protected in all watersheds except in the central business area.

(B) Protection methods for wetlands include: (1) appropriate setbacks that preserve the wetlands or wetland functions; (2) wetland mitigation, including wetland replacement; (3) wetland restoration or enhancement; or (4) use of a wetlands for water quality controls.

(C) The City of Lakeway may approve: (1) the removal and replacement of a wetland; or (2) the elimination of setbacks from a wetland that is proposed to be used as a water quality control.

2. Binding Effect. Third Parties. It is intended that the provisions of this Declaration shall be binding on all successors and assigns and run with the land. No rights, privileges or immunities, however, shall inure to the benefit of the public, any adjoining property owner or other third party (other than the City of Austin and the City of Lakeway) as a result of this Declaration, nor shall any adjoining property owner or other third party (other than the City of Austin and/or the City of Lakeway) be deemed to be a beneficiary of any of the provisions contained herein. The provisions of this Declaration shall be enforceable by the City of Austin and the City of Lakeway. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin or the City of Lakeway to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.

If any part of this agreement or covenant is declared invalid, by judgement or court order, the same shall in no way affect any other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.


If at any time the City of Austin or the City of Lakeway fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.

3. Modification. This Declaration may be modified, amended, or terminated only by the collective action of (a) at least fifty percent (50%) of the members of the Council of the City of Austin, (b) at least fifty percent (50%) of the members of the Council of the City

of Lakeway, and (c) the owner(s) of at least fifty percent (50%) of the gross land area of the Property at the time of such modification, amendment, or termination.

4. Counterparts. This Declaration may be executed in multiple counterparts, which shall be considered on instrument when taken together.

5. Applicability. This Declaration shall apply to the Property only and shall not affect other real property owned by Declarant.


James Power Heard, Jr., Mark Francis
Heard, Brian Patrick Heard, Philip John
Heard and Paul Bower Heard by James
Power heard, Jr., attorney in fact

STATE OF TEXAS
COUNTY OF TRAVIS

BEFORE ME, the undersigned authority, on this day personally appeared JAMES
POWER HEARD, JR. on behalf of and as attorney in fact for the Declarant and each of
them.

GIVEN UNDER MY HAND AND SEAL of office this 5th day of April
2006.


Notary Public in and for the
State of Texas



After Recording Return To:

FROM : HEARD BROTHERS

EXHIBIT "A"

July 27, 2000
 Job No. 00-136
 Page 1 of 3

METES AND BOUNDS DESCRIPTION

BEING 456.63 ACRES OF LAND LOCATED IN THE C. WOLFE SURVEY NO. 182, ABSTRACT 2825, THE T.C.R.R. CO. SURVEY NO. 181, ABSTRACT 2259, THE J.A. SOLVADO SURVEY NO. 847, ABSTRACT 645, THE W.A. BARLOW SURVEY NO. 86, ABSTRACT 2679 AND THE J.R. LOHMAN SURVEY NO. 524, ABSTRACT 882, IN TRAVIS COUNTY, TEXAS; SAID 456.63 ACRES BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO MRS. O.R. DAVENPORT BY DEED RECORDED IN VOLUME 1221, PAGE 112 OF THE DEED RECORDS OF TRAVIS COUNTY, TEXAS; SAID 456.63 ACRES BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the most westerly northwest corner of said 456.63 acre tract, same being the most southwesterly corner of that certain 1,232.48 acre tract conveyed to Commercial Lakeway Limited Partnership as Tract 7 by deed recorded in Volume 13241, Page 416 of the Real Property Records of Travis County, Texas, said iron rod also being in the east line of Bee Creek Road (50' ROW);

THENCE easterly and northerly along the common line between said 1,232.48 acre tract and the herein described 456.63 acre tract the following five (5) courses:

1. S 73°56'48" E a distance of 846.17 feet to a 3/4-inch iron pipe found for angle point;
2. S 61°55'47" E a distance of 2,159.89 feet to a 60d nail found in 6-inch cedar fence post for corner;
3. N 28°03'55" E a distance of 594.83 feet to a 6-inch cedar fence post found for angle point;
4. N 29°00'29" E a distance of 196.45 feet to a 1/2-inch iron rod found for angle point;
5. N 25°44'32" E a distance of 311.84 feet to a 60d nail in 8-inch fence post found for the most northerly corner of the herein described tract, same being the most westerly corner of that certain 23.262 acre tract conveyed to Norman & Suzanne Myers by deed recorded in Volume 11085, Page 2319 of the Real Property Records of Travis County, Texas;

THENCE S 70°07'37" E along the common line between said 23.262 acre tract and the herein described 456.63 acre tract a distance of 648.42 feet to a 1/2-inch iron rod set for angle point;

THENCE S 67°00'31" E continuing along the common line between said 23.262 acre tract and the herein described 456.63 acre tract a distance of 144.80 feet to a 1/2-inch iron rod found for angle point;

THENCE S 61°14'25" E continuing along the common line between said 23.262 acre tract, that certain 19.65 acre tract conveyed to Norman and Suzanne Myers by deed recorded in Volume 13487, Page 1841 of the Real Property Records of Travis County, Texas and the herein described 456.63 acre tract a distance of 741.42 feet to a 6-inch cedar fence post found for angle point;

FROM : HEARD BROTHERS

FAX NO. : 3613584287

Jun. 04 2001 03:15PM P3

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TRENCH S 65°07'30" E along the common line between said 15.65 acre tract, that certain 23.05 acre tract conveyed to Harriette A. Walls by deed recorded in Volume 3939, Page 2077, that certain 10.00 acre tract conveyed to Craig & Lauren Such by deed recorded in Volume 12320, Page 2316 of the Real Property Records of Travis County, Texas and the herein described 456.63 acre tract a distance of 2,900.18 feet to a 1/2-inch iron rod found for angle point;

TRENCH S 71°17'19" E continuing along said common line between said 10.00 acre tract and the herein described 456.63 acre tract a distance of 819.99 feet to a 1/2-inch iron rod found for angle point;

TRENCH southerly leaving said common line and crossing the aforementioned O.W. Davenport tract the following two (2) courses:

1. S 45°45'18" W a distance of 2,105.94 feet to a 1/2-inch iron rod set for angle point;

2. S 00°06'49" W a distance of 2,284.26 feet to a 1/2-inch iron rod set in the curving north line of State Highway No. 71 (ROW Varies);

TRENCH westerly along said north line of State Highway No. 71 the following eight (8) courses:

1. a distance of 1,133.80 feet along the arc of said curve to the right having a central angle of 40°54'43", a radius of 1,387.84 feet and a chord which bears N 75°47'38" W a distance of 1,109.86 feet to a Texas Department of Transportation concrete monument found for corner;

2. N 51°23'18" W a distance of 3,335.29 feet to a Texas Department of Transportation concrete monument found for angle point;

3. N 45°35'34" W a distance of 101.04 feet to a Texas Department of Transportation concrete monument found for angle point;

4. N 51°11'24" W a distance of 1,462.67 feet to a Texas Department of Transportation concrete monument found for the beginning of a curve to the left;

5. a distance of 1,910.77 feet along the arc of said curve to the left having a central angle of 18°46'43", a radius of 5,820.00 feet and a chord which bears N 60°48'35" W a distance of 1,902.23 feet to a Texas Department of Transportation concrete monument found for corner;

6. N 70°01'10" W a distance of 282.98 feet to a 1/2-inch iron rod set for the beginning of a curve to the right;

7. a distance of 521.12 feet along the arc of said curve to the right having a central angle of 20°16'12", a radius of 1,036.18 feet and a chord which bears N 55°51'04" W a distance of 515.85 feet to a Texas Department of Transportation concrete monument found for corner;

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1. N 41°47'52" W a distance of 313.94 feet to a 1/2-inch iron rod set for corner at the intersection of said north right-of-way line of State Highway No. 71 with the aforementioned east right-of-way line of Bee Creek Road (80'ROW);

THENCE northerly along said east right-of-way line of Bee Creek Road the following two (2) courses:

1. N 14°34'29" E a distance of 314.00 feet to a 1/2-inch iron rod set for angle point;
2. N 17°08'50" E a distance of 349.91 feet to the POINT OF BEGINNING of the herein described tract and containing 436.63 acres of land, more or less.

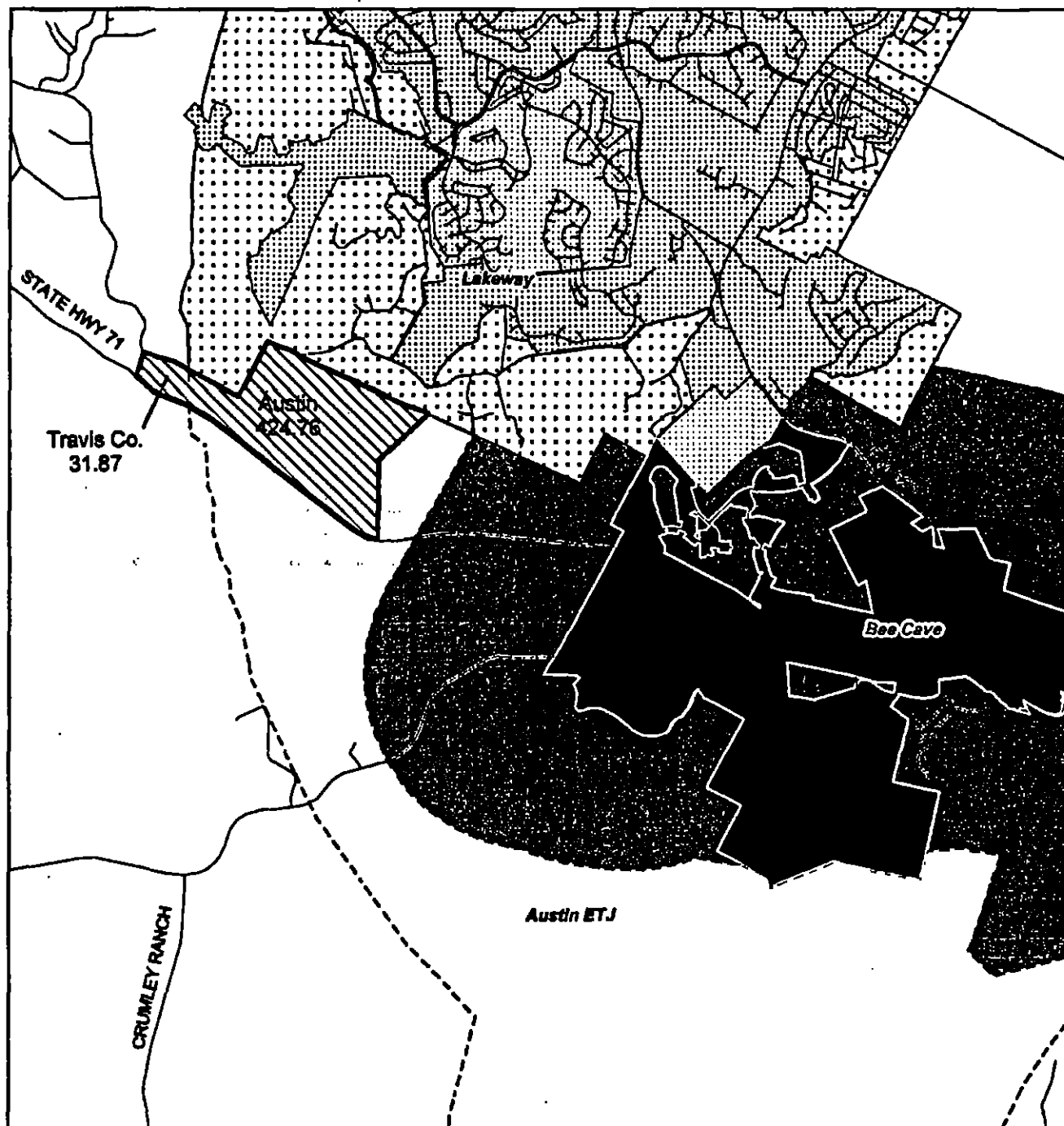
I HEREBY CERTIFY THAT THIS METES AND BOUNDS DESCRIPTION WAS PREPARED FROM A SURVEY PERFORMED IN THE FIELD UNDER MY SUPERVISION AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Steven R. McAdams, R.S.L.S. No. 3688






(The bearings described herein are referenced to the Texas State Plane Coordinate System, Central Zone (NAD29) based on City of Austin MDD Monument No. A189).






City of Austin ETJ Release to the City of Lakeway
Exhibit A to the Restrictive Covenant

Entire Heard Property + / - 457 acres

Legend

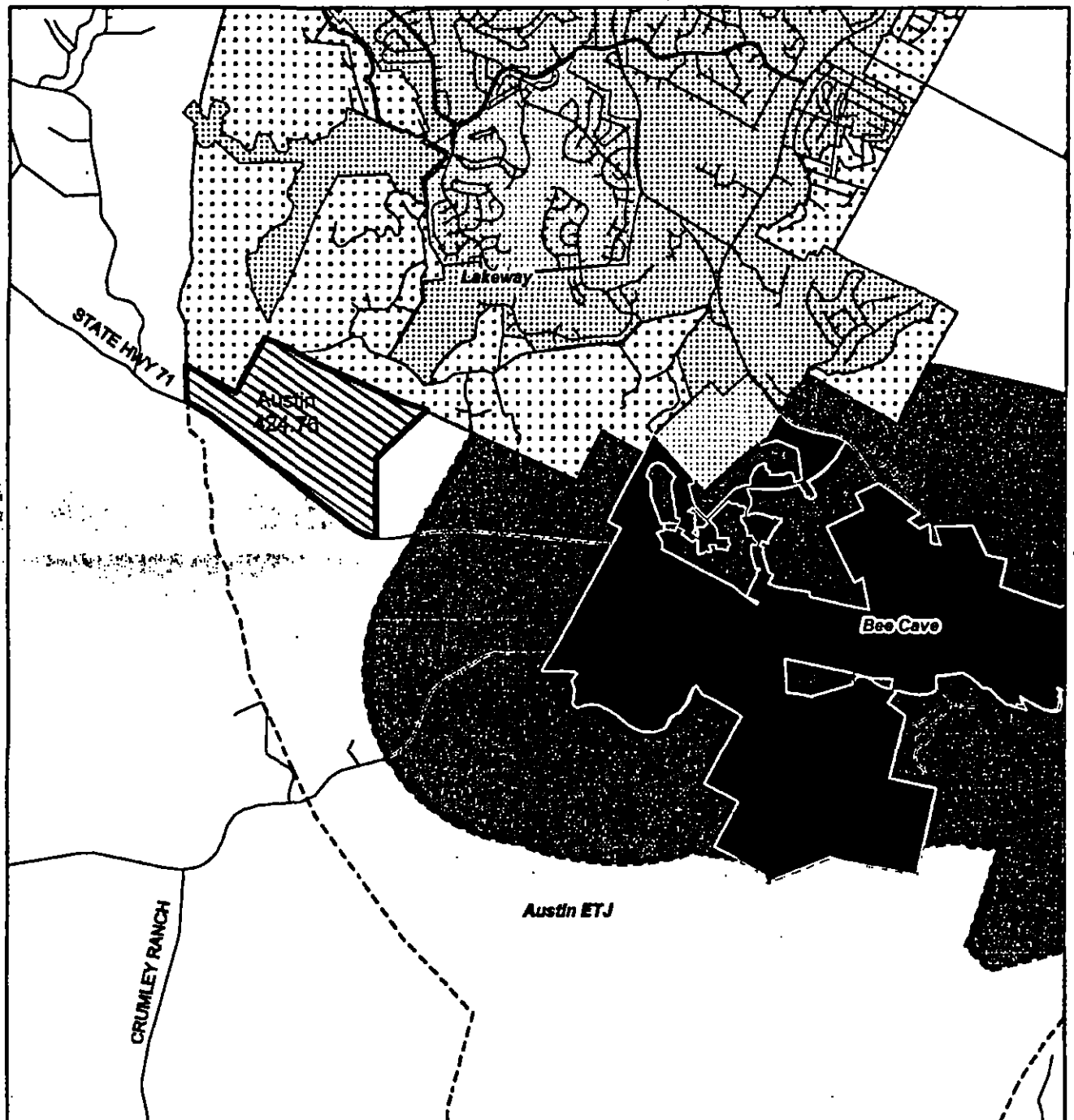
-  Entire Heard Property
-  Lakeway
-  Lakeway ETJ

-  Austin ETJ
-  Bee Cave
-  Bee Cave ETJ



City of Austin
 NPZD
 April 7, 2006





City of Austin ETJ Release to the City of Lakeway **Exhibit B to the Restrictive Covenant**

Heard Tract +/- 425 acres

0 0.5 1 Miles



City of Austin
 NPZD
 April 7, 2006



Legend



424.76 acre Release to Lakeway

Lakeway

Lakeway ETJ



Austin ETJ

Bee Cave

Bee Cave ETJ

Proposed ETJ Release to the City of Lakeway

Background

The City of Austin received a request from the City of Lakeway to release approximately 425 acres ("Lakeway Release Area") of Austin's extraterritorial jurisdiction ("ETJ") to be included in the City of Lakeway's ETJ. The area is located in Travis County north of State Highway 71 west of the intersection of State Highway 71 and Hamilton Pool Road.

Issues

Typically ETJ adjustments are evaluated according to the following general criteria:

- Annexation potential
- Water and Wastewater Utility service potential
- Geographic constraints
- Environmental impact
- Annexation potential by the receiving city
- Long-term effects of cumulative ETJ releases to other jurisdictions
- Hardship or extenuating circumstances

Annexation potential - determination of the mid-term potential for the area to be annexed by the City of Austin and an assessment of the impact of the proposed release on the City's long-term annexation plans

Contiguity requirements cannot be met for immediate annexation into the City of Austin and the closest jurisdictional boundary of the City of Austin is approximately 4 miles to the east. This release does not restrict the City's future ability to annex and serve adjacent areas.

Water and Wastewater Utility service potential - determination of whether the area can be served by the Water and Wastewater Utility in the mid-term and an assessment of the potential impact of the proposed release on the Utility

Austin does not have service immediately available and the ability for future service to the property is limited. The proposed release area is not in the City's water or wastewater CCN.

Geographic constraints - assessment of any physical impediments (including location and topography) that severally restrict the ability to provide services and annex the area in the future

The location of the Village of Bee Cave physically separates the property and effectively restricts Austin's ability to serve area annex this area in the future.

Environmental impact - assessment of the area of in terms of its environmental sensitivity and an analysis of environmental (including watershed) regulations currently

applicable as compared to regulations that would be applied should the release be granted.

The city's primary interest in retaining this ETJ has been enforcement of its water quality ordinances. The City of Austin's watershed regulations are more stringent in almost every respect than Lakeway's regulations. In response to previous requests for ETJ releases, the City has released ETJ conditioned on the execution of restrictive covenants by property owners and interlocal agreements with the receiving cities subjecting the released territory to water quality related development standards similar to what is required under the City's regulations.

Lakeway and the property owner's representative have indicated that the owner is willing to include additional environmental protections for the Lakeway Release Area through a restrictive covenant and is interested in developing the entire property, including a portion of the tract that is currently outside Austin's ETJ under the same regulations. Lakeway has agreed to apply and enforce the Development and Water Quality Regulations within the area as described in the Interlocal Agreement between Austin and Lakeway. In addition to Lakeway's Development Ordinance, development in the release area will comply with the following:

- (1) **Impervious Cover.** Total impervious cover placed or constructed on the Property shall not exceed twenty seven and one-half percent (27.5%) of the gross site area.
- (2) **Construction on Slopes.** Construction on slopes shall be in accordance with sub-chapters 25-8-301, 25-8-302 and 25-8-303 of the City of Austin's Land Development Code.
- (3) **Water Quality Control Measures.** Developments shall use stormwater controls as good as or better than those required by the City of Austin in the Water Supply Rural Watersheds, except that they shall be
 - a) required for all development regardless of type whenever the impervious cover for the area draining to the pond exceeds twelve percent (12%) gross site area, and
 - b) designed to capture the one year, three hour storm and release it over a minimum of 24 hours.
- (4) **Stream Buffers.** Stream buffers shall remain free of construction, development and other alterations except for utility or roadway crossings. The number of crossings through buffers should be minimized according to guidance found in the LCRA's Technical Manual (4th Edition, 2006). Stormwater treatment facilities, golf courses or wastewater irrigation shall not be located in the stream buffers. Stormwater discharge from the development shall be returned to overland flow before reaching the stream buffer.
Streams shall be buffered as follows:
 - a) Creeks or swales draining less than 128 acres but more than 32 acres shall have a minimum stream buffer width of 75 feet from the centerline on each side of the creek or swale for a total width of 150 feet.

b) Creeks or swales draining less than 320 acres but more than 128 acres shall have a minimum stream buffer width of 100 feet from the centerline on each side of the creek or swale for a total width of 200 feet.

c) Creeks or swales draining more than 320 acres shall have a minimum stream buffer width of 200 feet from the centerline on each side of the creek or swale for a total width of 400 feet.

(5) **Critical Environmental Features.** Critical environmental features shall be protected according the criteria found in sub-chapters 25-8-281 and 25-8-282 of the City of Austin's Land Development Code

Annexation potential by the receiving city - assessment of the ability of the receiving city to provide services and annex the area

The property is currently contiguous to Lakeway's ETJ which is generally better positioned to serve the area in the immediate and long-term future. Most services will be provided through contractual agreements with other governmental or private entities.

Long-term effects of cumulative ETJ releases to other jurisdictions - assessment of limiting the geographic expansion of City's regulatory authority and of increasing the amount of land near Austin but beyond Austin's jurisdiction, available for development.

The most recent ETJ adjustment with the City of Lakeway was effective April 24, 1997 and released approximately 124 acres of a proposed residential development.

Hardship or extenuating circumstances - relief of a condition that causes an undue hardship on a property owner or where unusual circumstances dictate the need for a release.

This ETJ release request does not relieve a hardship condition; as such situation does not exist.

Recommendation

The proposed ETJ release area has minimal annexation potential and future service constraints due to geographic location and physical impediments and this release should be made as a continuing process in regional coordination and cooperation with our neighboring cities contingent on encumbering the property with restrictions agreeable to all parties that would mirror regulations in place prior to the release.

The product of several months of discussions and meetings with officials from Lakeway, the release of ETJ to Lakeway is recommended at this time.