



Thursday, July 27, 2006

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

**ITEM No. 20**





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**Subject:** Approve an Interlocal Agreement regarding the exchange of extraterritorial jurisdiction (ETJ) with the City of Lakeway, which will result in approximately 425 acres (Lakeway Release Area) being released from Austin's ETJ to Lakeway's ETJ and approximately 100.6 acres (Austin Release Area) being disannexed from Lakeway's city limits and released to Austin's ETJ.

**Amount and Source of Funding:** No fiscal impact.

**Additional Backup  
Material**

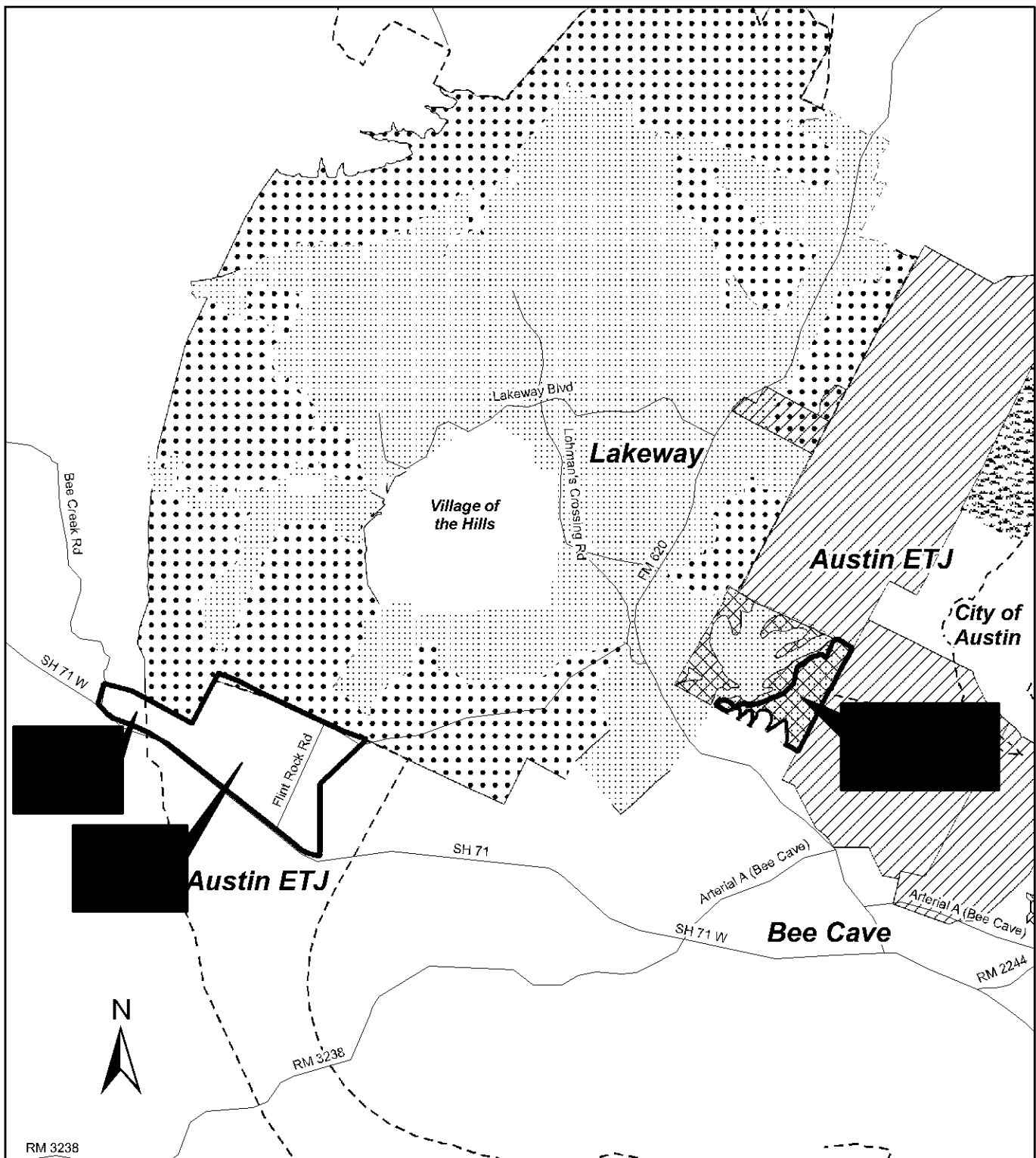
(click to open)

-  [Map](#)
-  [Interlocal Agreement](#)
-  [Restrictive Covenant](#)
-  [Staff Recommendation](#)

**For More Information:** Virginia Collier, 974-2022; Jackie Chuter, 974-2613; Sylvia Arzola, 974-6448.

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See attached Staff Report.



## ETJ Exchange with the City of Lakeway

CETJ-06-003



City of Austin  
NPZD  
June 30, 2006

This map shows the best available data; however, its accuracy is not guaranteed.

### Legend

- Heard Property +/- 457 Ac.
- Lakeway
- Lakeway ETJ

- Austin ETJ
- Bee Cave
- Bee Cave ETJ

### BCP OWNER

- City of Austin
- City of Lakeway
- Other Owner

0 0.5 1 Miles

## 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 identified as Tract B (the "Lakeway Release Area"), so that the entire 456.63 acre Heard Ranch including both Tract A and Tract B described in Exhibit "A" ("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 exchange contemplated by this Agreement has been completed, Lakeway will be responsible for approval of subdivisions and public and private construction improvements within that area; and

**Whereas**, Lakeway has agreed to convey approximately 100.6 acres of property owned by Lakeway to Austin identified as Tract C in Exhibit "A" as (the "Austin Release Area"), and to release the Austin Release Area from the ETJ of Lakeway into the ETJ of Austin; and

Whereas, Lakeway has agreed to undertake certain actions regarding the Austin Release 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 exchange 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 Map attached hereto as Exhibit "A" incorporated herein for all purposes.

## **Article Three Exchange of ETJ/Property Conveyance**

**Section 3.1 ETJ Exchange.** Austin will release to Lakeway the portion of Austin ETJ identified as Tract B shown on Exhibit "A" to this Agreement, and as more particularly described in Exhibit "A". Lakeway will release to Austin the portion of Lakeway ETJ identified as Tract C shown on Exhibit "A" to this Agreement, and as more particularly described in Exhibit "A". The exchange of ETJ will occur upon execution of this Agreement by both parties and such exchange is subject to condition that the Entire Property becoming a part 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. The Austin Release Area is presently owned by Lakeway as a part of the Balcones Canyonland Preserve, and is subject to a federal 10a permit. The Austin Release Area will be maintained by Austin as a part of the Balcones Canyonland Preserve.

**Section 3.2 Property Conveyance/Acceptance.** At the request of Austin, Lakeway will convey to Austin, and Austin will accept from Lakeway, title to the Austin Release Area. The Austin Release Area is presently owned by Lakeway and managed as a part of the Balcones Canyonland Preserve, and is subject to a federal 10a permit. The Austin Release Area will be maintained by Austin as a part of the Balcones Canyonland Preserve. Within 120 days from the date hereof Lakeway will (i) provide to Austin a current Category 1(a) land title survey certified to Austin and the title company (which may be an updated survey of an existing survey, but must in any case have been performed or updated within the last 120 days); (ii) provide to Austin a current Environmental Site Assessment (ESA) certified to Austin (which may be in the form of an existing ESA with a reliance letter in favor of Austin but must in any case have been performed or updated within the last 120 days); and (iii) provide to Austin a current (within the last 30 days) title commitment for an owner's policy of title insurance together with legible copies of all title exception documents. Upon Austin's review and approval of such items, if Austin desires to obtain title, as determined by the Austin Water Utility Director or his designee, Lakeway will, within 60 days of written request by Austin (i) provide to Austin a special warranty deed in mutually acceptable form and (ii) an Owner's Policy of Title Insurance, both subject only to the specific exceptions shown on the title commitment. All costs associated with the information and documentation and title transfer set forth above, including the cost of title insurance, any survey, any ESA, any deed preparation and any recording fees for the deed shall be paid by Lakeway.

**Section 3.3 Additional Agreements.** Lakeway (i) will build or will cause to be built a fence along the southern boundary line of the Austin Release Area by March 1, 2007, which fence shall conform to the City of Austin's Balcones Canyonlands Preserve ("BCP") Program fence standards, or (ii) will cause an agreement, with terms and conditions reasonably acceptable to Austin, to be in place by June 15, 2007. Such agreement shall provide for the construction of a fence along the southern boundary line of the Austin Release Area which conforms to the City of Austin BCP fence standards, or shall provide for the construction of a type of fence otherwise acceptable to Austin, by the owner of the tract of property bounding the southern boundary of the Property as a part of the development of such bounding property. Such agreement shall also require the commencement of construction on or about September 1, 2007, with a ninety day time for completion.

**Section 3.4** Lakeway agrees to the release of Tract "D" from the Austin ETJ to the Village of Bee Cave's ETJ, at such time as Austin and the Village of Bee Cave enter into an agreement for such release.

#### **Article Four**

##### **Review and Approval of Subdivision Applications and Construction**

**Section 4.1. Subdivision and Construction Review and Approval.** Upon exchange 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 five percent (25 %) of the gross site area.

(2) **Construction on Slopes.** Construction on slopes shall meet or exceed the requirements of City Code Sections 30-5-301, 30-5-302 and 30-5-303, as set out below.

**§ 30-5-301**

(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.

**§ 30-5-302**

(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.

**§ 30-5-303**

(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.** All development will treat development related stormwater runoff regardless of the type of development or amount of impervious cover. Water quality controls will be designed in accordance with the 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition). Water quality controls that capture and treat runoff shall be designed to capture and treat the runoff from 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 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition).. 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 City Code Sections 30-5-281 and 30-5-282, as set out below. Lakeway shall have the authority to grant administrative variances as provided in Section 30-5-281(D).

#### **§ 30-5-281**

(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 30-5-213 (*Water Quality Control Standards*) 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.

### **§ 30-5-282**

(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.

**(6) IPM.** An Integrated Pest Management Plan (IPM) in accordance with City of Austin regulations for the management of onsite pesticides and fertilizers must be developed for each separate parcel.

**(7) Planting.** Ninety percent (90%) of the total plant material used in the project (exclusive of turf) shall be native to Central Texas, and/or native or adapted plants recommended by Grow Green Native and Adapted Landscape Plants Guide prepared by the City of Austin and the Texas Cooperative Extension, and published August 2003. Plants listed on the Invasive Species list or the Problem Plants list in the Grow Green Plants Guide may not be included.

**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 exhibit is incorporated into this Agreement by reference as if fully set out herein:

Exhibit "A": Tracts A, B, C and D

**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**

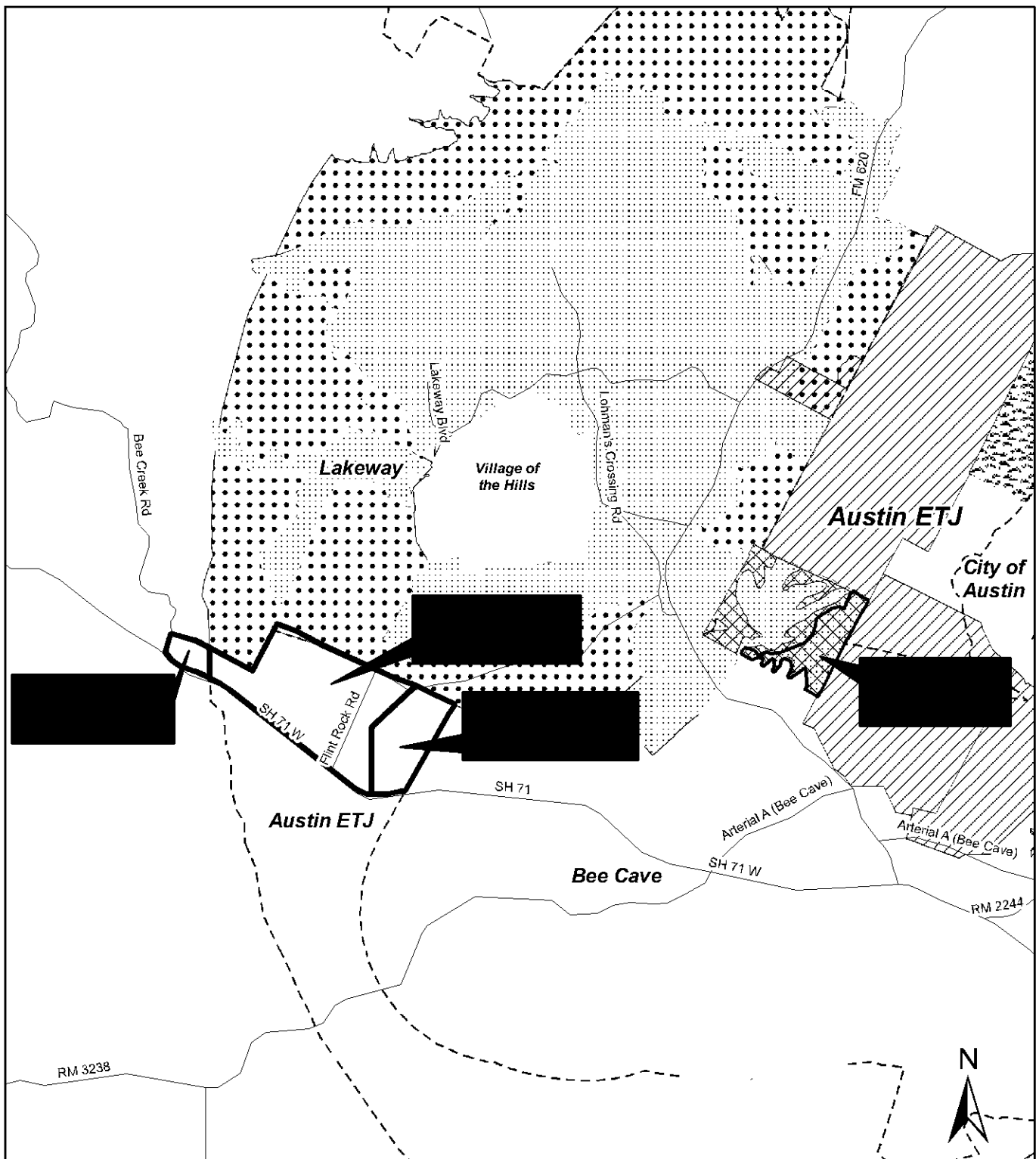
**City of Lakeway, Texas**

\_\_\_\_\_  
Toby Hammett Futrell, City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Steve Swan, Mayor

Date: \_\_\_\_\_



## Austin ETJ Exchange with the City of Lakeway

Exhibit A to the Interlocal Agreement

CETJ-06-003



City of Austin  
NPZD  
July 20, 2006

This map shows the best data available to the City of Austin; however, its accuracy is not guaranteed.

### LEGEND

- Subject Tract
- Lakeway
- Lakeway ETJ

- Austin ETJ
- Bee Cave
- Bee Cave ETJ

0 0.5 1 Miles

Balcones Canyonlands  
Preserve Owner

- City of Austin
- City of Lakeway
- Other Owner

## DECLARATION OF RESTRICTIVE COVENANTS

STATE OF TEXAS

COUNTY OF TRAVIS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") is made on this 20 day of July, 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 as Tract A Exhibit "A" (the "Property"), of which approximately 425 acres described as Tract B in Exhibit "A" (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 Entire Property shall not exceed twenty five percent (25 %) of the gross site area.

(2) **Construction on Slopes.** Construction on slopes shall meet or exceed the requirements of City Code Sections 30-5-301, 30-5-302 and 30-5-303, as set out below.

### **§ 30-5-301**

(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.

#### **§ 30-5-302**

(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.

#### **§ 30-5-303**

(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.** All development will treat development related stormwater runoff regardless of the type of development or amount of impervious cover. Water quality controls will be designed in accordance with the 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition). Water quality controls that capture and treat runoff shall be designed to capture and treat the runoff from 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 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition).* 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.

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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

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(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.



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(B) Protection methods for wetlands include:

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**(6) IPM.** An Integrated Pest Management Plan (IPM) in accordance with City of Austin regulations for the management of onsite pesticides and fertilizers must be developed for each separate parcel.

**(7) Planting.** Ninety percent (90%) of the total plant material used in the project (exclusive of turf) shall be native to Central Texas, and/or native or adapted plants recommended by Grow Green Native and Adapted Landscape Plants Guide prepared by the City of Austin and the Texas Cooperative Extension, and published August 2003. Plants listed on the Invasive Species list or the Problem Plants list in the Grow Green Plants Guide may not be included.

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.

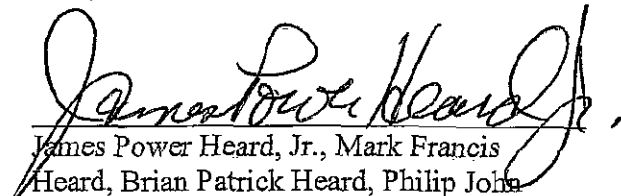
If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

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.

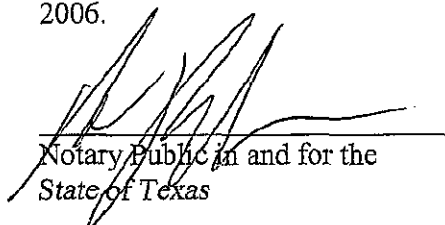
5. Applicability. This Declaration shall apply to the Property only and shall not affect other real property owned by Declarant.

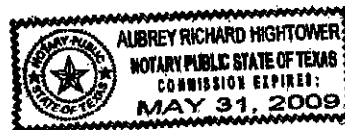
  
James Power Heard, Jr., Mark Francis  
Heard, Brian Patrick Heard, Philip John  
Heard and Paul Bower Heard by James  
Power heard, Jr., attorney in fact

STATE OF TEXAS  
COUNTY OF TRAVIS

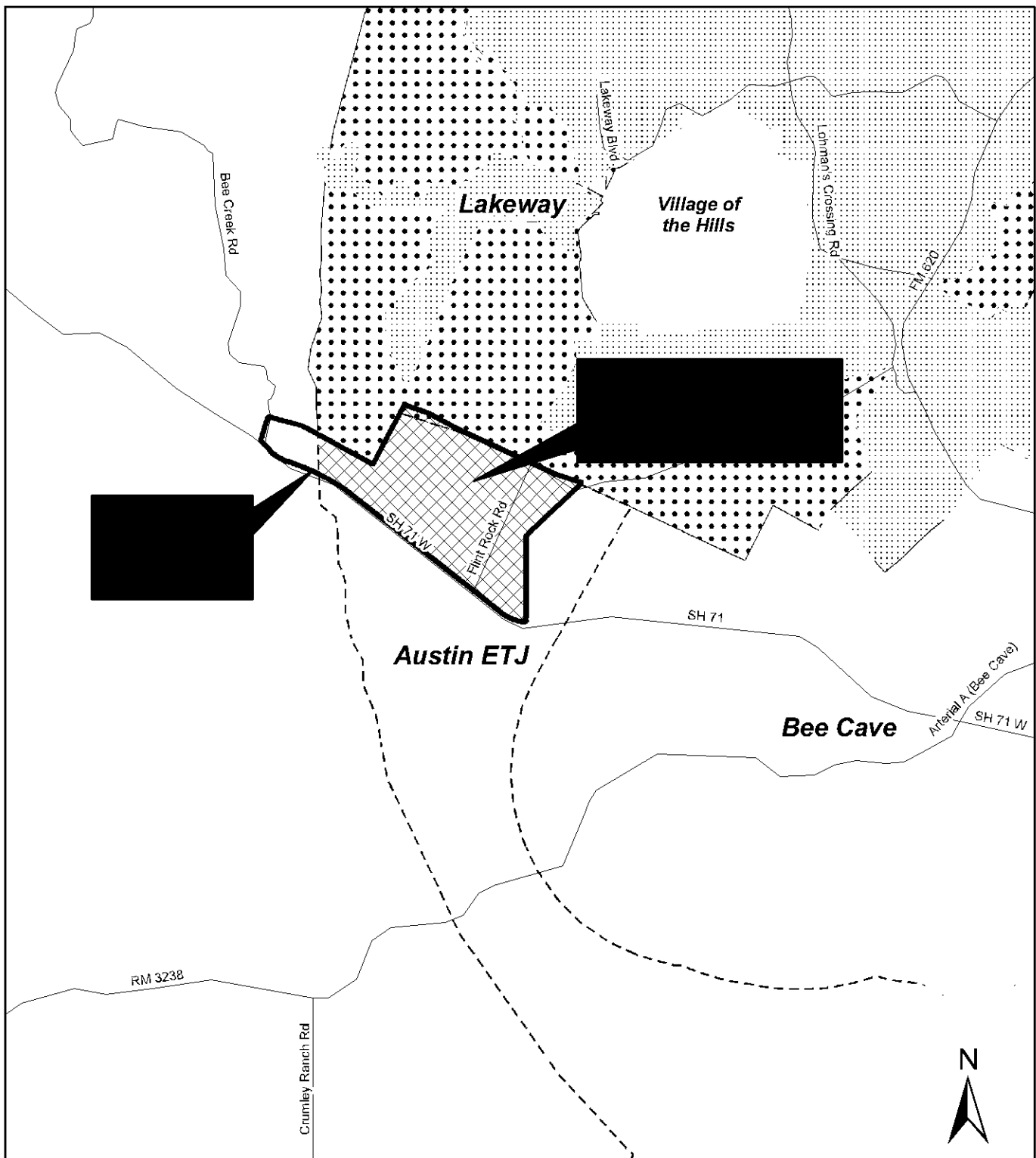
BEFORE ME, the undersigned authority, on this day personally appeared JAMES POWER HEARD, JR. on behalf of and as attorney in fact for Mark Francis Heard, Brian Patrick Heard, Philip John Heard and Paul Bower Heard by James Power Heard, Jr., and each of them.

GIVEN UNDER MY HAND AND SEAL of office this 20 day of July  
2006.

  
Notary Public in and for the  
State of Texas



After Recording Return To:




## Austin ETJ Exchange with the City of Lakeway


Exhibit A to the Restrictive Covenant

CETJ-06-003

0 0.5 1 Miles

### Legend

 Heard Property  
456.63 Acres


 Lakeway Release Area  
Approx. 425 Acres

 Austin ETJ

 Lakeway

 Lakeway ETJ

 Bee Cave

 Bee Cave ETJ



City of Austin  
NPZD  
July 20, 2006

This map shows the best data available to the City of Austin; however, its accuracy is not guaranteed.

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 2525, THE T.C.R.R. CO. SURVEY NO. 181, ABSTRACT 2259, THE J.A. POLVADO SURVEY NO. 647, ABSTRACT 645, THE W.A. BARLOW SURVEY NO. 86, ABSTRACT 2679 AND THE J.H. LOHMAN SURVEY NO. 524, ABSTRACT 502, IN TRAVIS COUNTY, TEXAS; SAID 456.63 ACRES BEING A PORTION OF THAT CERTAIN TRACT CONVEYED TO MRS. O.H. 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 1,232.45 acre tract conveyed to Commercial Lakeway Limited Partnership as Tract I by deed recorded in Volume 13241, Page 436 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 1,232.45 acre tract and the herein described 456.63 acre tract the following five (5) courses:

1. S 73°56'48" E a distance of 946.17 feet to a 3/4-inch iron pipe found for angle point;
2. S 61°55'47" E a distance of 2,359.89 feet to a 60d nail found in 6-inch cedar fence post for corner;
3. N 28°03'56" E a distance of 994.63 feet to a 6-inch cedar fence post found for angle point;
4. N 28°00'29" E a distance of 296.45 feet to a 1/2-inch iron rod found for angle point;
5. N 25°44'32" E a distance of 511.94 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 11095, Page 2310 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 144.00 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 15.65 acre tract conveyed to Norman and Suzanne Myers by deed recorded in Volume 12467, Page 1641 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;

July 27, 2000  
Job No. 00-136  
Page 2 of 3

THENCE S 65°07'16" 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 30.00 acre tract conveyed to Craig & Lauren Bach 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;

THENCE S 71°17'19" E continuing along said common line between said 30.00 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;

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

1. S 46°49'18" 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);

THENCE 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 1,587.84 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°23'38" 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°21'24" W a distance of 1,462.62 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 5,830.00 feet and a chord which bears N 60°48'25" 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 1,056.18 feet and a chord which bears N 55°53'04" W a distance of 515.85 feet to a Texas Department of Transportation concrete monument found for corner;


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

8. 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 (50' 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 456.63 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. McAngus, R.P./L.S. No. 3680



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

## DURABLE GENERAL POWER OF ATTORNEY AND AUTHORIZATION

Each of James Power Heard, Jr., Mark Francis Heard, Brian Patrick Heard, Philip John Heard and Paul Bower Heard, hereby make, constitute and appoint JAMES POWER HEARD, JR. (also known as Jim Heard) of Travis County, Texas, my true and lawful agent and attorney in fact (hereinafter referred to as my "Agent") for me and in my name, place and stead, and for my use and benefit for the purposes stated herein.

1. My Agent, shall have the power to execute, sign, approve and deliver such instruments, documents and agreements of whatever kind and nature, in connection with the sale, ownership, management and other terms regarding 456.63 acre tract of land described in Exhibit "A" (the "Property"), as said attorney may desire.

2. I specifically authorize my Agent to make and execute and endorse my name to any and all checks, drafts and other sums payable to all or any one of us.

3. I further grant to my said Agent full power and authority to do and perform all and every act and thing requisite, necessary, and proper to be done in the exercise of any of the rights and powers herein granted, as fully as I might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that my said Agent, shall lawfully do or cause to be done by virtue of this power of attorney and the rights and powers herein granted.


The rights, powers, and authority of said Agent to exercise any and all of the rights and powers herein granted shall commence and be in full force and effect from the execution date hereof, and shall remain in full force and effect until revocation hereof is recorded in the office of the County Clerk of Travis County, Texas.

Any bank or other lending institution may rely on a facsimile or other copy of this agreement, and this agreement shall be enforceable by such entity unless such entity has received actual written notice of revocation prior to reliance on the terms hereof.

THIS POWER AND AGREEMENT SHALL BE BINDING ON ANY PARTY SIGNING BELOW WHETHER OR NOT SIGNED BY ALL PARTIES IDENTIFIED BELOW.

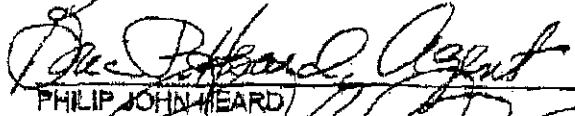
THIS POWER OF ATTORNEY SHALL NOT TERMINATE UPON MY DISABILITY OR INCOMPETENCY.

IN WITNESS WHEREOF, we have hereinto set our hands.

  
JAMES POWER HEARD, JR.

  
MARK FRANCIS HEARD

  
BRIAN PATRICK HEARD

  
PHILIP JOHN HEARD

  
PAUL BOWER HEARD





## MEMORANDUM

**To:** Laura Huffman, Assistant City Manager

**From:** Virginia Collier  
Neighborhood Planning & Zoning Department

**Date:** July 20, 2006

**Subject:** Proposed ETJ Exchange with the City of Lakeway

### **Background**

The City of Lakeway has requested the 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.

Lakeway has agreed to convey approximately 100.6 acres of habitat mitigation land currently owned and managed as preserve land by the City of Lakeway to Austin ("Austin Release Area"), and to disannex and release this area to Austin's ETJ. This land is immediately adjacent to City of Austin preserve land and will be managed by the City of Austin's Balcones Canyonlands Preserve Program ("BCP").

The purpose of the ETJ is to allow a city to plan for growth in the area outside its boundaries. Cities are authorized to enforce their subdivision and water quality related site development regulations within their ETJ. This ensures that development in the ETJ will meet the city's standards and protects environmental quality in areas adjacent to the city.

### **Lakeway Release Area**

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 from Austin and effectively restricts Austin's ability to serve and 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 Entire Property shall not exceed twenty five percent (25 %) of the gross site area.

(2) **Construction on Slopes.** Construction on slopes shall meet or exceed the requirements of City Code Sections 30-5-301, 30-5-302 and 30-5-303, as set out below.

**§ 30-5-301**

(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.

**§ 30-5-302**

(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.

**§ 30-5-303**

(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.** All development will treat development related stormwater runoff regardless of the type of development or amount of impervious cover. Water quality controls will be designed in accordance with the 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition). Water quality controls that capture and treat runoff shall be designed to capture and treat the runoff from 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 2006 Lower Colorado River Authority Water Quality Management Technical Manual (4<sup>th</sup> Edition).. 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 City Code Sections 30-5-281 and 30-5-282, as set out below. Lakeway shall have the authority to grant administrative variances as provided in Section 30-5-281(D).

**§ 30-5-281**

(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 30-5-213 (*Water Quality Control Standards*) 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.

**§ 30-5-282**

(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.

(6) **IPM.** An Integrated Pest Management Plan (IPM) in accordance with City of Austin regulations for the management of onsite pesticides and fertilizers must be developed for each separate parcel.

(7) **Planting.** Ninety percent (90%) of the total plant material used in the project (exclusive of turf) shall be native to Central Texas, and/or native or adapted plants recommended by Grow Green Native and Adapted Landscape Plants Guide prepared by the City of Austin and the Texas Cooperative Extension, and published August 2003. Plants listed on the Invasive Species list or the Problem Plants list in the Grow Green Plants Guide may not be included.

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.

### **Austin Release Area**

The primary purpose of designated preserve land is the conservation of endangered species and their habitat. Lakeway has agreed to convey approximately 100.6 acres of habitat mitigation land currently owned and managed as preserve land by the City of Lakeway to Austin ("Austin Release Area"), and to disannex and release this area to Austin's ETJ. This land is immediately adjacent to City of Austin preserve land and will be managed by the City of Austin's Balcones Canyonlands Preserve Program ("BCP").

Developed properties to the south and west require appropriate fencing to address urban interface issues such as controlling public access and deer intrusion. The City of Austin BCP land fencing requirements include eight foot deer-proof fencing. The installation of fencing along the southern boundary of the Austin release area in compliance with City of Austin's BCP Program fence standards is a condition of the ETJ exchange. Upon release and conveyance to Austin, management and monitoring of this preserve land will be performed by the City of Austin.

### **Recommendation**

The proposed Lakeway Release Area has minimal annexation potential and future service constraints due to geographic location and physical impediments. This exchange should be made as a continuing process in regional coordination and cooperation with our neighboring cities, contingent on encumbering the Lakeway Release Area with restrictions agreeable to all parties that would provide the same level of water quality protection as the regulations in place prior to the release.

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