

# ZONING CHANGE, OVERLAY OR ESTABLISHMENT OF A HISTORIC DISTRICT/LANDMARK APPLICATION



Updated: March, 2023

## CONTACT INFORMATION

Applicant's Name	Michael J. Whellan	Property Owner	Multiple; See Insert
Company	Armbrust & Brown, PLLC	Company	
Applicant's Mailing Address	100 Congress Ave., #1300 Austin, TX 78701	Owner's Mailing Address	
Applicant's Phone #	[REDACTED]	Owner's Phone #	
Applicant's Email	[REDACTED]	Owner's Email	

## PROPERTY INFORMATION

Subject Property Address(es): 900 Francis Harris Ln. and a portion of 1789 York Creek Rd.

Legal Description: Lot -- \_\_\_\_\_ Block -- \_\_\_\_\_ Subdivision -- \_\_\_\_\_

Total Acreage: 199.49 Tax ID #: R Tract 1 (70024), Tract 2 (10808, 10877)

Preferred Scenario Designation: Conservation/Cluster\* Existing Zoning: Tract 1: CD-2.5 Tract 2: Unzoned

Existing Land Use(s): Undeveloped

\*Conservation/Cluster is the current Preferred Scenario Designation. Owners have requested Commercial/Employment Low.

## DESCRIPTION OF REQUEST

Proposed Zoning District(s): LI

Proposed Land Uses / Reason for Change: Applicants request ability to provide a data center use on the property.

## AUTHORIZATION

*I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.*

Filing Fee\* \$1,000 plus \$150 per acre Technology Fee \$15 **MAXIMUM COST \$5,015**

\*Existing Neighborhood Regulating Plan Included.

Submittal of this digital Application shall constitute as acknowledgment and authorization to process this request.

**APPLY ONLINE – [WWW.MYGOVERNMENTONLINE.ORG/](http://WWW.MYGOVERNMENTONLINE.ORG/)**

## Owner Information

### Tract 1

Property Owner: Highlander SM One, LLC (John Maberry)  
Mailing Address: P.O. Box 470249, Fort Worth, TX 76147  
Phone Number: [REDACTED]  
Email Address: [REDACTED]

### Tract 2

Property Owner: Donald and Germaine Tuff (Attorney: Kristen Quinney Porter)  
Mailing Address: P.O. Box 312643, New Braunfels, Texas 78131  
Phone Number: [REDACTED]  
Email Address: [REDACTED]

PROPERTY OWNER AUTHORIZATION

I, John Maberry (owner name) on behalf of Highlander SM One, LLC (company, if applicable) acknowledge that I/we am/are the rightful owner of the property located at 900 Francis Harris Ln. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of Armbrust & Brown, PLLC (agent company) to file this application for preferred scenario map amendment and zoning (application type), and, if necessary, to work with the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: John Maberry Date: 9/16/25  
Printed Name, Title: John Maberry

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name, Title: Michael J. Whellan, Agent

PROPERTY OWNER AUTHORIZATION

I, John Maberry (owner name) on behalf of  
Highlander SM One, LLC (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
900 Francis Harris Ln. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of  
Armbrust & Brown, PLLC (agent company) to file this application for  
preferred scenario map (application type), and, if necessary, to work with  
amendment and zoning  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: John Maberry

Signature of Agent:  Date: 9/16/25

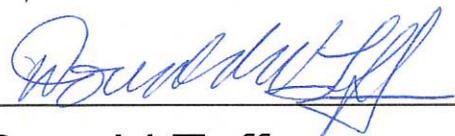
Printed Name, Title: Michael J. Whellan, Agent

Form Updated October, 2019

PROPERTY OWNER AUTHORIZATION

I, Donald Tuff (owner name) on behalf of  
-- (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
1789 York Creek Rd. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of  
Armbrust & Brown, PLLC (agent company) to file this application for  
annexation, preferred (application type), and, if necessary, to work with  
scenario map amendment, and zoning  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner:  Date: Sept 9, 2025  
Printed Name, Title: Donald Tuff

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name, Title: Michael J. Whellan, Agent

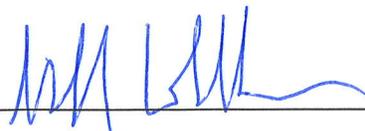
PROPERTY OWNER AUTHORIZATION

I, Donald Tuff (owner name) on behalf of  
-- (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
1789 York Creek Rd. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of  
Armbrust & Brown, PLLC (agent company) to file this application for  
annexation, preferred (application type), and, if necessary, to work with  
scenario map amendment, and zoning  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: Donald Tuff

Signature of Agent:  Date: 9/16/25

Printed Name, Title: Michael J. Whellan, Agent

Form Updated October, 2019

PROPERTY OWNER AUTHORIZATION

I, Germaine Tuff (owner name) on behalf of  
-- (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
1789 York Creek Rd. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of  
Armbrust & Brown, PLLC (agent company) to file this application for  
annexation, preferred (application type), and, if necessary, to work with  
scenario map amendment, and zoning  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: *Germaine Tuff* Date: 9/9/25  
Printed Name, Title: Germaine Tuff

Signature of Agent: \_\_\_\_\_ Date: \_\_\_\_\_  
Printed Name, Title: Michael J. Whellan, Agent

Form Updated October, 2019

PROPERTY OWNER AUTHORIZATION

I, Germaine Tuff (owner name) on behalf of  
-- (company, if applicable) acknowledge that I/we  
am/are the rightful owner of the property located at  
1789 York Creek Rd. (address).

I hereby authorize Michael J. Whellan (agent name) on behalf of  
Armbrust & Brown, PLLC (agent company) to file this application for  
annexation, preferred (application type), and, if necessary, to work with  
scenario map amendment, and zoning  
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name, Title: Germaine Tuff

Signature of Agent:  Date: 9/16/25

Printed Name, Title: Michael J. Whellan, Agent

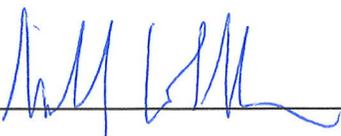
Form Updated October, 2019

**AGREEMENT TO THE PLACEMENT OF NOTIFICATION SIGNS  
AND ACKNOWLEDGEMENT OF NOTIFICATION REQUIREMENTS**

The City of San Marcos Development Code requires public notification in the form of notification signs on the subject property, published notice, and / or personal notice based on the type of application presented to the Planning Commission and / or City Council.

- Notification Signs: if required by code, staff shall place notification signs on each street adjacent to the subject property and must be placed in a visible, unobstructed location near the property line. It is unlawful for a person to alter any notification sign, or to remove it while the request is pending. However, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements. ***It shall be the responsibility of the applicant to periodically check sign locations to verify that the signs remain in place had have not been vandalized or removed. The applicant shall immediately notify the responsible official of any missing or defective signs. It is unlawful for a person to alter any notification sign, or to remove it while the case is pending; however, any removal or alteration that is beyond the control of the applicant shall not constitute a failure to meet notification requirements.***
- Published Notice: if required by code, staff shall publish a notice in a newspaper of general circulation in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be published it may be at the expense of the applicant. The renotification fee shall be \$150 plus a \$15 technology fee.***
- Personal Notice: if required by code, staff shall mail personal notice in accordance with City Codes and the Texas Local Government Code. ***If, for any reason, more than one notice is required to be mailed it may be at the expense of the applicant. The renotification fee shall be \$150 plus a \$15 technology fee.***

*I have read the above statements and agree to the required public notification, as required, based on the attached application. The City's Planning and Development Services Department staff has my permission to place signs, as required, on the property and I will notify City staff if the sign(s) is/are damaged, moved or removed. I understand the process of notification and public hearing and hereby submit the attached application for review by the City.*

Signature:  \_\_\_\_\_

Date: 9/16/25 \_\_\_\_\_

Print Name: Michael J. Whellan

Form Updated March, 2023

**Francis Harris Lane Data Center  
Question and Answer Report**

**Property Boundaries and Cemetery**

➤ ***What are the boundaries of the property proposed for the data center project?***

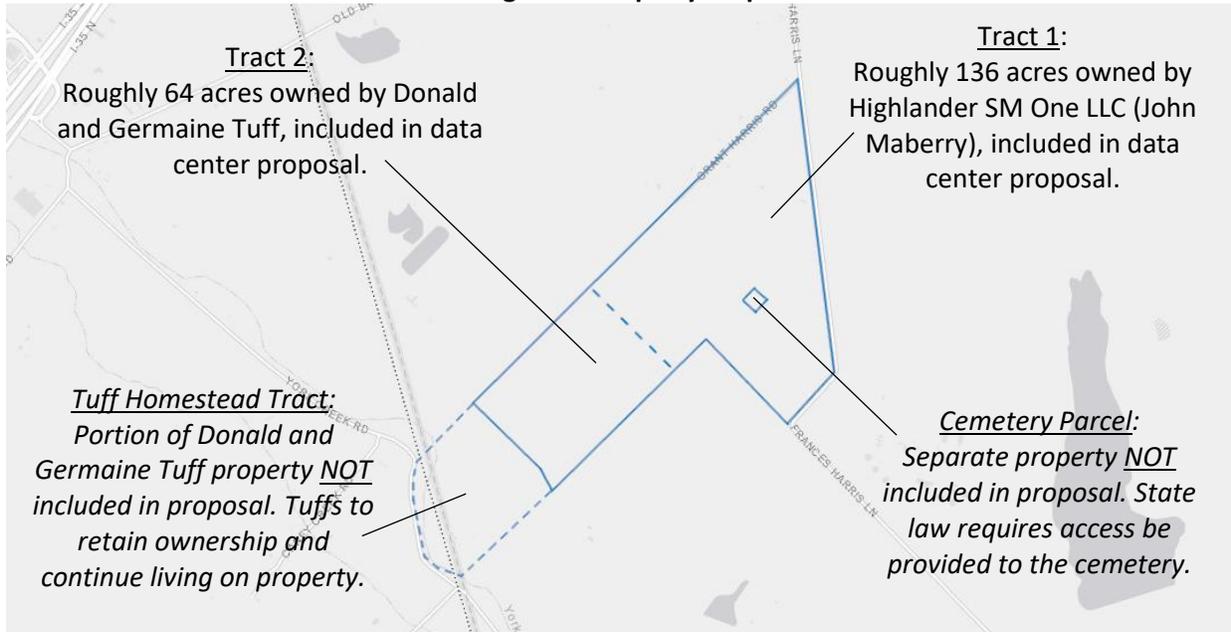
The boundaries of the proposed data center site are shown in Figure 1 below as Tracts 1 and 2.

Highlander SM One, LLC currently owns Tract 1, which consists of roughly 136 acres. Donald and Germaine Tuff currently own Tract 2, which consists of roughly 64 acres that Highlander SM One, LLC has under contract to purchase as part of the proposed data center project.

The Tuff family is retaining the remainder of the property that they currently own (the Tuff Homestead Tract in Figure 1), and plans to continue living on that land as their homestead. Highlander SM One, LLC does not have that property under contract and has not included that property in its applications.

Additionally, there is a cemetery located on a separate parcel of land surrounded by the property (the Cemetery Parcel in Figure 1). The Cemetery Parcel is not part of the property and is not owned by the applicants.

**Figure 1. Property Map**



➤ ***Will the applicants provide access to the Cemetery Parcel?***

Yes. In fact, state law explicitly requires property owners provide access to cemeteries in cases in which no public access exists. Section 711.041 of the Texas Health and Safety Code states that: “Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.”

➤ ***Have the applicants used the Cemetery Parcel or the surrounding area for cattle grazing?***

No. An old image on the Hays Historical Commission website shows cattle grazing near the Cemetery Parcel and identifies the property's owner as Mr. Ragsdale. Deed records indicate that Mr. Ragsdale sold Tract 1 to Hays Energy in 1999. Highlander SM One, LLC (John Maberry) bought Tract 1 from Hays Energy in 2022. Highlander SM One, LLC has not used Tract 1 for grazing during its ownership tenure.

➤ ***Have the applicants studied the Cemetery Parcel?***

Yes. Previously, Highlander SM One, LLC had evaluated Tract 1 for development as a large residential subdivision. At that time, the City of San Marcos asked Highlander SM One, LLC to study the Cemetery Parcel – and a surrounding buffer area – to determine the actual limits of the cemetery and the extent of human burials. In an effort to be responsive to City and community interest, Highlander SM One, LLC hired a licensed Texas geoscientist to perform a ground-penetrating radar study of the cemetery and buffer area. This study found that “the current limits of the cemetery have been preserved throughout history” and that “the surveyed outer buffer zone [around the cemetery] lacks evidence suggestive of human burials” [emphasis added].

### **Community Benefits and Project Commitments**

➤ ***How has the applicant worked to address concerns regarding the data center use?***

The applicant has worked to develop a binding restrictive covenant that would commit the property to the following, regardless of ownership:

- **Limiting Water Use.** Any data center on the property will not exceed 235 LUEs or 75,000 gallons of water per day. (For reference, the large single-family subdivision previously planned for Tract 1 is approved for up to 550 LUEs – roughly double the allowable data center water usage).
- **Improving Drainage.** The data center development must reduce the stormwater runoff rate on the property by 10 percent below the *pre-construction* runoff rate for the 2-year, 10-year, 25-year, and 100-year storms.
- **Lowering Impervious Cover.** The restrictive covenant would limit impervious cover on the property to 70 percent – lower than what Light Industrial zoning otherwise allows (80 percent).
- **Superior Building Standards.** The owners will seek Leadership in Energy and Environmental Design (LEED) certification for data center development. As a show of good faith, the applicants have already registered the property to pursue LEED certification.
- **Restricting Sound.** The restrictive covenant would limit sound to a flat 75 decibels throughout the day – a superior standard to what the City of San Marcos currently requires.
- **Restricting Uses.** The restrictive covenant would prohibit warehouse and distribution and waste-related service uses, which would otherwise be allowed in the Light Industrial zoning district.

This binding restrictive covenant would commit the property to standards above and beyond the City's own requirements.

➤ ***Is the restrictive covenant enforceable?***

Yes. The restrictive covenant includes one of the strongest means of enforcement and accountability: injunctive relief. This gives the courts authority to mandate compliance, rather than handling violations through warning letters or fines. To put this into perspective, an injunction could mean forced equipment changes, suspension of operations, or shutdown of certain systems – major disruptions that would have a significant impact on the data center. Additionally, because the property is in the City, the City will have oversight during the development phase to ensure compliance.

Injunctive relief poses a uniquely acute risk to data-center operations. Unlike many land uses, data centers are designed, financed, and contracted on the premise that they will be able to operate consistently throughout the day, every day. They routinely support mission-critical functions including healthcare systems, emergency communications, financial clearing, and governmental operations. The possibility of injunctive interruption – whether temporary or permanent – represents a major risk to such facilities and is therefore the most powerful deterrent available.

➤ ***How else will this project affect the San Marcos community?***

The data center proposal will benefit the San Marcos community in a number of ways:

- **This proposal will generate significant new City taxes – without stressing City resources.** Based on similar data center projects in Texas, we estimate a data center project on this property would generate roughly \$4 million in annual revenues for the City and \$7 million to San Marcos ISD. At the same time, a data center project would have only limited needs for City services – and thus will have a positive fiscal impact. In contrast, the previous proposal for this Property – a roughly 470-unit single-family subdivision – would generate a higher demand for City services such as police, fire, emergency services, transportation infrastructure, and parkland, among other things.
- **This proposal will generate over 1,000 skilled construction jobs working on complex infrastructure.** We estimate that a data center on this property would, during project build-out, create over 1,000 skilled construction jobs for laborers, concrete crews, electricians, linemen, HVAC technicians, control specialist, and project managers. We also estimate the data center will produce over 125 permanent jobs to maintain the facilities at full capacity. The construction especially jobs will provide critical experience working on complex infrastructure, helping develop local construction expertise that will continue to benefit the San Marcos community even after construction completes. Importantly, the applicants have earned the support of the Laborers' International Union of North America (LIUNA), which represents construction workers and other skilled laborers. The applicants have also outlined specific expectations for construction employment in the restrictive covenant.
- **This proposal will help build out local energy infrastructure, supporting San Marcos' ability to support other important uses.** Well-planned data center projects build out high-capacity, high-quality infrastructure – at the applicant's expense – from which local energy utilities and other community-serving uses with higher energy needs can benefit. For instance, the Texas Legislative Study Group, a progressive legislative caucus in the Texas House of Representatives, wrote in a report that data centers “support everyday activities as well as vital emergency, hospital, and public safety operations. Because data centers concentrate steady demand, they give generators a clear market signal and an incentive to build capacity nearby, accelerating the expansion of generation, transmission, and distribution needed to meet the state's growing power needs.”

➤ ***What is the property currently zoned for?***

Tract 1 currently has CD-2.5 zoning, a designation that would allow a large, nearly 500-unit single-family subdivision, directly adjacent to the Hays Energy Power Plant. A large single-family subdivision would require City services such as police, fire, emergency services, transportation infrastructure, and parkland, among other things. Tract 2 is currently located in the ETJ, is unzoned, and could develop outside the City limits (with no obligation to meet City regulations).

**Water and Energy**

➤ ***How would a data center project on this property affect water usage?***

This proposal cuts water usage in half from the level previously approved for a single-family subdivision on the property. Tract 1 alone is currently approved for 550 LUEs of water use. In contrast, the applicants have proposed a binding restrictive covenant that would limit a data center on this property – which would include both Tracts 1 *and* 2 – to 235 LUEs, or 75,000 gallons of water per day.

The Hill Country Alliance, with support from the San Marcos River Foundation, has produced the report “Data Centers & Water Use: A Community Guide” to evaluate water usage implications from data center development. The guide lays out the most efficient, sustainable methods of designing data centers with minimal impact to water resources both directly (for facility cooling) and indirectly (from energy consumption).

The applicants’ proposed water usage limits – which they propose to accomplish through a closed-loop, non-evaporative system – addresses direct water consumption. The community guide states that a closed-loop system “tends to be the most water-efficient cooling strategy for large data centers in Central Texas.”

Regarding indirect water consumption, the community guide encourages data centers to connect to the Texas grid, stating: “when a data center is connected to the grid, it can access renewable energy and energy produced *outside* of water-scarce environments – which can make the grid a more water-friendly choice for the Hill Country.”

The applicants’ proposed project is consistent with these recommendations.

➤ ***How would the data center project manage energy use concerns?***

The data center will fully comply with Senate Bill 6, which set new statewide regulations to manage the challenges posed by large-load users such as data centers. For reference, the Lone Star Chapter of the Sierra Club supported Senate Bill 6, and the bill passed with large, bipartisan majorities in both the Texas House and the Texas Senate.

Among other things, this new law requires new data center applicants make meaningful up-front financial commitments and gives ERCOT greater authority to direct data centers to reduce their loads during grid emergencies. These requirements are aimed at deterring speculation, improving the state’s ability to plan for its energy needs, and expanding ERCOT’s ability to actively manage energy usage from data centers and other large-load users during grid emergencies.

As ERCOT’s CEO, Pablo Vegas, stated in an interview with Hearst Newspapers: “If a data center connects onto our [ERCOT’s] grid and the grid gets tight, they have to turn off before we (have rotating outages).”

## Environmental

➤ ***Would a data center project on this property be subject to City environmental regulations?***

Yes. Currently, Tract 2 is located in the City's extraterritorial jurisdiction (ETJ), which subjects it to fewer City regulations than if it were located within the City limits. As part of this data center proposal, the applicants are requesting to annex Tract 2 into the City limits, which would subject it to more City rules and regulations – including zoning regulations. (Tract 1 is already located within the City limits.)

Many other data center developments in the region are being proposed in ETJ areas, and would thus have no obligation to meeting the more rigorous environmental standards that apply within City limits. This proposal, in contrast, would not only develop within the City of San Marcos, subject to San Marcos environmental regulations – but would also meet a higher environmental standard through the binding restrictive covenant.

As described above, this restrictive covenant would commit the data center project to standards above and beyond that which the City otherwise requires, limiting water usage, improving drainage outcomes, reducing impervious cover below what Light Industrial zoning allows, setting a flat decibel limit and committing the project to pursuing LEED certification. In fact, the applicants have already registered the site for LEED.

➤ ***Will the City require the applicants to perform an Environmental Impact Assessment?***

Yes. Chapter 2, Article 6 of the Development Code requires applicants to complete and submit a Watershed Protection Plan for City review and approval as part of any permit authorizing land disturbance.

The City's application for a Watershed Protection Plan requires applicants to provide the City with a list of different reports, documentation, and information to assess potential environmental impacts broadly. These include: slope, contour, and soil maps, documentation of both existing and proposed drainage patterns, documentation and calculations related to drainage and water quality facilities, identification of waterways and other sensitive features, a geological assessment, tree survey, and an environmental assessment report, among numerous other things.

The application requires that a qualified environmental professional conduct the environmental assessment report and review potential impacts to federally listed threatened or endangered species, archeological sites, historical structures, contaminated soils, and hazardous spills, among other things. The applicants have already completed many of these studies. These studies have not identified any concerns related to endangered species or environmental features.

➤ ***Does the property feature floodplain?***

No. The Owners are not aware of any floodplain or other environmentally sensitive features impacting the Property. The Property is not located in the 'Environmental Overlay' shown in Vision SMTX or over the recharge zone.

Currently, Tract 2 is located in the City's extraterritorial jurisdiction (ETJ), which subjects it to fewer City regulations than if it were located within the City limits. As part of this data center proposal, the applicants

are requesting to annex Tract 2 into the City limits, which would subject it to more City rules and regulations – including zoning regulations. (Tract 1 is already located within the City limits.)

For instance, while City regulations impose some limited impervious cover restrictions in the ETJ, they are mostly contingent upon certain circumstances or site features. In contrast, zoning imposes broader impervious cover limitations that will apply regardless of individual circumstances.

➤ ***How will the data center project handle lighting?***

Because the entire property will be within the City, Chapter 7, Article 5 of the Development Code regulates light distribution, fixtures, and intensity, among other things, “based on the model lighting ordinance developed by the International Dark Sky Association.” The proposed data center project will be designed to these standards, enforceable by the City. For reference, the Development Code exempts single-family properties from these exterior lighting standards.

**Procedural Questions**

➤ ***Does the Council’s 2025 vote on the prior applications prevent Council from acting on these cases?***

No. Section 2.3.4.1.A. of the Development Code specifies that “Whenever any development application, with the exception of any plat application, is denied at a public hearing for failure to meet the substantive requirements of this Development Code, a development application for all or a part of the same property shall not be accepted for filing for a period of six months from the date of denial unless the subsequent application involves a proposal that is materially different from the previously denied proposal.”

Council did not vote to deny any of the cases related to the Property. However, as Section 2.4.2.3.C.3. of the Development Code required a super-majority vote of Council in order to approve this application, the Preferred Scenario Map Amendment did not proceed. This action is distinct and different from a denial, which would have required a motion and a second to deny the application and an affirmative vote of a majority of Council in favor of denial.

Furthermore, Section 2.3.4.1.A. only applies to development applications that were “denied at a public hearing for failure to meet the substantive requirements of this Development Code.” None of the applications “fail[ed] to meet the substantive requirements of this Development Code.”

Finally, Section 2.5.1.2.F.1.b. requires a waiting period for cases involving “Withdrawal of the same requested change by the applicant after the City Council meeting at which the change is to be considered has been called to order.” This provision is intended to deter applicants from withdrawing ‘live’ cases during a Council meeting (“after the City Council meeting at which the change is to be considered has been called to order”).

In this case, because the Preferred Scenario Map Amendment case did not proceed, Council could not – and did not – take action on the associated rezoning request. The applicant did not withdraw the rezoning case during the Council meeting or at any point during which the case was still ‘live.’ Instead, the applicant resubmitted the rezoning application as a matter of procedure, so that the rezoning case could proceed along with the resubmitted Preferred Scenario Map Amendment application.

➤ ***Is there a petition against the rezoning case?***

Yes. State law and the City's Development Code establish procedures by which neighboring landowners can submit a petition against rezoning applications and Preferred Scenario Map Amendment changes. In this case, the petition primarily consists of a large institutional landowner, Carson Select Investments, LP, which owns 786 acres of land in the ETJ, directly across the street from this property.

For reference, Carson Select Investments, LP applied to the City of San Marcos last year for a development agreement which their application materials indicate would zone "the approximately 184-acres directly abutting the Hays Energy power plant" for Light Industrial zoning and development as a data center. In other words, Carson Select Investments, LP's application envisioned a data center of a comparable size and at a comparable location to the project proposed in these applications. The petition was filed at a point in the review process that would arguably maximize its impact on the applicants' own request.

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744

January 2, 2026

Mr. Terry Floyd, Director  
Planning & Development Services Department  
City of San Marcos  
630 E. Hopkin St.  
San Marcos, TX 78666

Subject: Applications for 900 Francis Harris Ln. and a portion of 1789 York Creek Rd. (also known as 904 Francis Harris Ln.)

Dear Mr. Floyd,

On behalf of Highlander SM One, LLC and Donald and Germaine Tuff (collectively, the “Owners”), I am submitting the following application packages, which would allow 900 Francis Harris Ln. (“Tract 1”) and a portion of 1789 York Creek Rd. (“Tract 2”) (collectively, the “Property”) to be developed as a data center:

- **Annexation.** The Owners have a pending request for the City to annex Tract 2 into the City’s full-purpose jurisdiction. (Tract 1 is already located within the City of San Marcos.)
- **Preferred Scenario Map Amendment.** The Owners request the City change the Preferred Scenario Map designation for the Property from Conservation/Cluster to Commercial/Employment Low.
- **Zoning.** The Owners request the City rezone Tract 1 from Character District 2.5 to Light Industrial (“LI”) and zone Tract 2 for LI upon annexation.

I have summarized these requests in Figure 1 below. In accordance with San Marcos policy, I met with City staff for a pre-development meeting on September 8, 2025. This letter replaces the letter dated September 17, 2025.

**Figure 1. Application Package Summary**

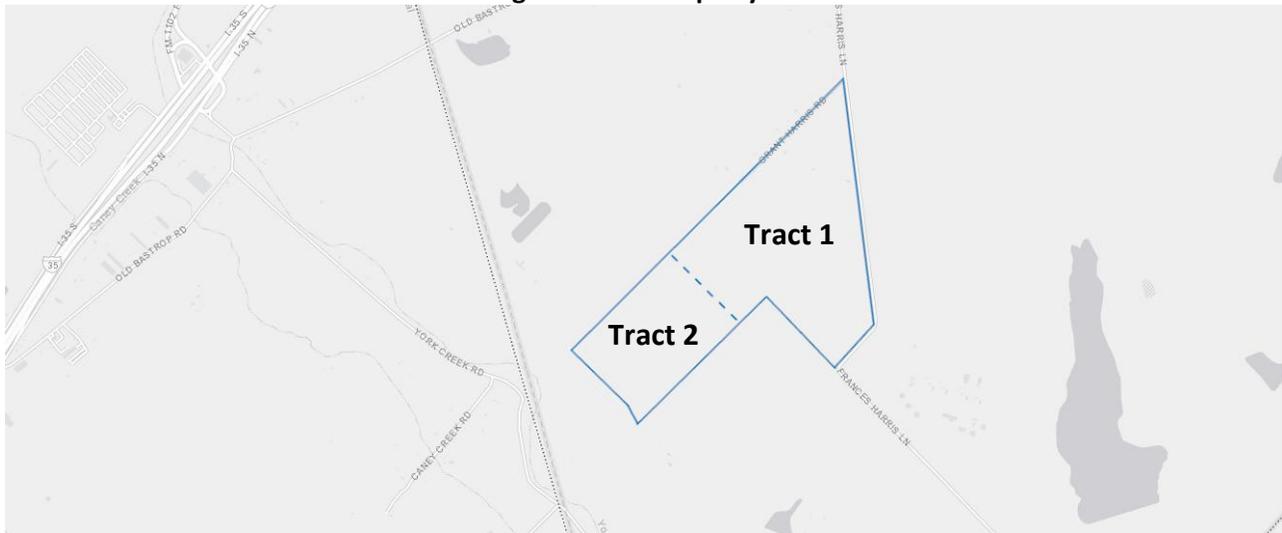
	Tract 1	Tract 2
<b>Size</b>	135.91 acres	63.58 acres
<b>Jurisdiction</b>		
<b>Current Jurisdiction</b>	City of San Marcos	Extraterritorial Jurisdiction
<b>Requested Jurisdiction</b>	City of San Marcos	City of San Marcos
<b>Zoning</b>		
<b>Current Zoning</b>	Character District 2.5	Unzoned
<b>Requested Jurisdiction</b>	Light Industrial	Light Industrial
<b>Preferred Scenario Map</b>		
<b>Current Designation</b>	Conservation/Cluster	Conservation/Cluster
<b>Requested Designation</b>	Commercial/Employment Low	Commercial/Employment Low

## Land Use Context

The Property consists of a nearly 200-acre assemblage of two large tracts between Francis Harris Lane and York Creek Road, as shown in Figure 2 below.

The City has designated the entire Property for “Conservation/Cluster” on the Preferred Scenario Map and has designated Tract 1 for Character District 2.5 (“CD-2.5”) zoning. Tract 2 is in the City’s extraterritorial jurisdiction (“ETJ”) and is unzoned.

**Figure 2. The Property**



The Property features the following land-use context:

- **The Property is primarily surrounded by ETJ parcels designated for Conservation/Cluster** (with one exception, as described below). The Property is located in the southernmost part of San Marcos, connected to the rest of the City by Francis Harris Lane. Most of the surrounding parcels (including Tract 2 of the Property) are in the ETJ and thus are not subject to San Marcos zoning. The Preferred Scenario Map generally designates these parcels for Conservation/Cluster.
- **The Property is immediately adjacent to a power plant – the only other zoned parcel in the area.** Tract 1 is one of only two parcels in this area of San Marcos that is within City limits (and, thus, is zoned). As noted, Tract 1 is currently zoned for CD-2.5. The only other zoned parcel in the area – 109 acres of land immediately adjacent to Tract 1 – is designated for Commercial/Employment Low, zoned for Heavy Industrial (“HI”), and used for a power plant.

## Case Discussion

The following information summarizes some of the major topics discussed to date related to the Owners’ proposal to develop the Property for a data center:

- **Utility Service.** The project is not proposed to use City services for water or electricity. Instead, the project intends to use the Crystal Clear Special Utility District (“CCSUD”) for water service and

Pedernales Electric Cooperative (“PEC”) for electricity. Ultimately, information on water service and electricity consumption will be finalized through the site development process and will be subject to CCSUD, PEC, and Lower Colorado River Authority (“LCRA”) approval.

Additionally, the Owners have worked to answer concerns related to utility service, including proposing a restrictive covenant that would limit water usage to 235 LUEs – which would cut the water usage approved for the Property today roughly in half. The Owners are also committed to fully complying with a new state law, Senate Bill 6, which regulates data center development and energy use throughout Texas. (For reference, the Lone Star Chapter of the Sierra Club supported the passage of Senate Bill 6.)

Among other provisions, this new law sets cost-sharing and disclosure requirements intended to support ERCOT’s efforts to plan for grid reliability and to deter speculation. Critically, the law also provides greater authority for ERCOT to reduce energy to new large-load users during emergencies. As ERCOT’s CEO, Pablo Vegas, stated in an interview with Hearst Newspapers: “If a data center connects onto our [ERCOT’s] grid and the grid gets tight, they have to turn off before we (have rotating outages.”

- **Environmental.** The Owners are not aware of any floodplain or other environmentally sensitive features impacting the Property, and the Property is not located in the ‘Environmental Overlay’ shown in Vision SMTX. Through this process, the Owners are proposing to annex the Property into San Marcos, which will provide greater protections than are otherwise afforded in the ETJ.

Additionally, the Owners have proposed a restrictive covenant that would commit the Property to superior environmental standards, including provisions related to impervious cover, stormwater runoff, green building, and sound limits (as discussed in more detail below).

- **Cemetery.** There is a cemetery (the Nichols Cemetery) located on a parcel of land that is surrounded by Tract 1. The applicants do not own this cemetery parcel. State law (Section 711.041 of the Texas Health and Safety Code) provides public access rights to any such cemeteries, stating that: “Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds.”

Highlander SM One, LLC also previously hired a licensed Texas geoscientist to perform a ground-penetrating radar study of the area *around* the cemetery to determine if there were any other burials in the general vicinity of the cemetery. This study determined that “the current limits of the cemetery have been preserved throughout history” and that “the surveyed outer buffer zone [around the cemetery] lacks evidence suggestive of human burials”

- **Fiscal Responsibility.** The Vision SMTX Comprehensive Plan prioritizes development patterns that have a positive fiscal impact, with new revenues balanced against long-term responsibilities for providing City services and maintaining City infrastructure. While a data center use will generate meaningful new tax revenues, it will have only limited needs for City services – and thus will have a positive fiscal impact. In contrast, the previous proposal for this Property – a roughly 470-unit single-family subdivision – would generate a higher demand for City services for things like police, fire, emergency services, transportation infrastructure, and parkland, among other things.

Based on similar data center projects in Texas, we estimate roughly \$4 million in annual revenues for the City and \$7 million to San Marcos ISD.

- **Compatibility.** The Property is directly adjacent to a power plant (which the City has designated for the Commercial/Employment Low Place Type and for Heavy Industrial zoning). A data center project on the Property would be more compatible with this existing power plant use than a large single-family subdivision project.

### **Restrictive Covenant**

The Owners have worked collaboratively to incorporate feedback and improve their proposal. As part of this effort, the Owners have proposed a binding restrictive covenant that would commit the Property to the following, regardless of ownership:

- **Limiting Water Use.** Any data center on the Property will not exceed 235 LUEs or 75,000 gallons per day of water usage (for reference, the single-family subdivision plan at this site is approved for up to 550 LUEs).
- **Improving Drainage.** The data center development must reduce the stormwater runoff rate on the Property by 10 percent below the pre-construction runoff rate for the 2-year, 10-year, 25-year, and 100-year storms.
- **Lowering Impervious Cover.** The restrictive covenant would limit impervious cover on the Property to 70 percent – lower than what the Light Industrial zoning designation would otherwise allow (80 percent).
- **Superior Building Standards.** The owner must seek Leadership in Energy and Environmental Design (LEED) certification for any data center development on the Property.
- **Restricting Sound.** The restrictive covenant would limit sound to 75 decibels throughout the day and evening, which is a more restrictive standard that required in the City of San Marcos Development Code.
- **Restricting Uses.** The restrictive covenant would prohibit warehouse and distribution and waste-related service uses, which would otherwise be allowed in the Light Industrial zoning district.

### **Case Rationale**

We believe that these requests are appropriate, reasonable, and consistent with the City's goals and with good planning and land use practices. Specifically, we believe that:

- **The Owners have worked collaboratively to put forward an environmentally superior proposal** that limits water use, improves drainage, and provides superior building standards, among other things (as discussed above).
- **A data center use will produce new tax revenues with limited need for City services.** As noted above, a data center use will produce meaningful new tax revenues while having only limited

needs for City services such as police, fire, emergency services, transportation infrastructure, and parkland, among other things. As a result, such a project would be a major fiscal benefit for the City budget and for taxpayers.

- **A data center use will have a lower traffic footprint and produce less ‘wear and tear’ on roads.** The Property is currently connected to the rest of the City via one roadway, Francis Harris Lane. Thus, any traffic entering or exiting the Property will largely be concentrated on that one road. Higher-volume uses would generate greater congestion and ‘wear and tear’ for the City to manage, in contrast to the lower traffic footprint of a data center.
- **This is the right location for a data center use, from a planning perspective.** Data center uses often require large tracts of land that an owner can readily secure against unauthorized access and that are not vulnerable to environmental hazards or other such features. These characteristics generally mean that properties on the edge of the City are likelier to be appropriate for a data center use. Given this dynamic, other data center developments have been proposed in areas *outside* the City limits. Such projects would not be subject to the City’s environmental regulations and would not contribute to the City’s tax base. In contrast, this proposal would meet a higher environmental standard while also paying City taxes.

### Prior Cases

In December 2024, the Owners submitted applications for annexation, Preferred Scenario Map Amendment, and zoning related to the Property, with the goal of developing the Property for a data center use.

On March 25, 2025, the Planning and Zoning Commission held a public hearing on the Preferred Scenario Map Amendment and zoning cases. While the Owners requested that the Planning and Zoning Commission postpone the cases to allow additional time to address concerns, the Commission ultimately proceeded and recommended denial of both cases on an 8-1 vote.

At its August 19, 2025 regularly scheduled Council meeting (which concluded after midnight on August 20), Council took the following actions related to those cases:

- Council voted 7-0 in favor of the annexation request on first reading only. This case was later postponed as the associated Preferred Scenario Map Amendment and zoning cases failed to proceed (as described below).
- Council voted 5-2 in favor of the Preferred Scenario Map Amendment request. However, as Section 2.4.2.3.C.3. of the Development Code required a super-majority vote of Council in order to approve this application, the Preferred Scenario Map Amendment did not proceed.

(Importantly, the Development Code distinguishes between applications that are denied versus those that fail to achieve a super-majority threshold. Section 2.2.4.2.A. of the Development Code, which defines how the City administers the super-majority requirement, specifies that applications that fail to earn the requisite super-majority vote do “not become effective” – it does not describe the application as being denied. Specifically, that provision states: “Development applications where a super majority vote is required by this development code **shall not become effective** [emphasis added] except by the favorable vote of six members of the City Council.”)

- Council took no action on the zoning request, since the associated Preferred Scenario Map Amendment failed to proceed.

We have likewise reviewed the relevant portions of the Development Code and concluded that the Owners have the right to submit the attached applications at this time. Our analysis of the relevant provisions is provided below:

- **General Re-Application Provision.** Section 2.3.4.1.A. of the Development Code specifies that “Whenever any development application, with the exception of any plat application, is denied at a public hearing for failure to meet the substantive requirements of this Development Code, a development application for all or a part of the same property shall not be accepted for filing for a period of six months from the date of denial unless the subsequent application involves a proposal that is materially different from the previously denied proposal.”

Council did not vote to deny any of the cases related to the Property. However, as Section 2.4.2.3.C.3. of the Development Code required a super-majority vote of Council in order to approve this application, the Preferred Scenario Map Amendment did not proceed. This action is distinct and different from a denial, which would have required a motion and a second to deny the application and an affirmative vote of a majority of Council in favor of denial.

Furthermore, Section 2.3.4.1.A. only applies to development applications that were “denied at a public hearing for failure to meet the substantive requirements of this Development Code.” None of the applications “fail[ed] to meet the substantive requirements of this Development Code.”

As a result, Section 2.3.4.1.A. does not apply to the attached applications.

- **Preferred Scenario Map Amendments.** Section 2.4.2.2. of the Development Code specifies that “Consideration of Preferred Scenario Map amendments that are modifications to a Neighborhood Low-Existing Place Type shall be limited to twice per year as determined by the Responsible Official.” The City has designated the Property for Conservation/Cluster, not Neighborhood Low-Existing.

As a result, Section 2.4.2.2. does not apply to the attached applications.

- **Zoning.** Section 2.5.1.2.F.1. prohibits the Planning and Zoning Commission and City Council from considering a zoning application for a property within a year of any of the following:
  - “A City Council vote to deny the same requested change for all or any portion of the parcel.”
  - “Withdrawal of the same requested change by the applicant after the City Council meeting at which the change is to be considered has been called to order.”
  - “A modification to the boundary of the same requested change by the applicant after the Planning and Zoning Commission has voted on the matter.”

The Owners proceeded to Council for a vote on the zoning application and did not modify the case boundaries. Ultimately, as the Preferred Scenario Map Amendment case did not proceed, Council took no action on the association zoning case.

As a result, Section 2.5.1.2.F.1. does not apply to the attached applications.

We discussed this information with the City, which agreed with our interpretation of these code provisions and with our analysis that the Owners have the right to submit the attached applications at this time

### **Conclusion**

We believe that this request is reasonable, that our proposal will help the City achieve superior policy outcomes on issues like environmental sustainability and fiscal responsibility, and that the Property is an appropriate location for a data center development.

We appreciate your consideration – and I am available to discuss this case further and answer questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael J. Whellan", with a stylized flourish at the end.

Michael J. Whellan

## Attachment A: Fiscal Analysis

As part of its Vision SMTX planning process, the City considered how different development patterns affect both “the estimated revenues generated by new development” and “the estimated costs of public services required to serve that development,” with the goal of ensuring that the City grows in a fiscally responsible and sustainable manner.

In short, the City generally prioritizes development patterns that balance new tax revenues against the long-term costs of public services (for infrastructure, policing, fire and emergency services, and more). Development patterns that produce greater tax revenues than they demand in public services will help support the City’s fiscal sustainability over the long term.

By this metric, a data center is a prudent choice at this location. When compared to the most recent proposed use of this site (single-family subdivision), a data center will have a lower overall need for City services while producing meaningful tax revenues.

As noted above, the Property is located on the edge of San Marcos’ city limits and is connected to the rest of the City by a single roadway, Francis Harris Lane. This site context has several important implications for fiscal sustainability:

- **Property Location.** First, the Property’s location at the edge of the city limits means that development patterns which demand higher levels of City services will stress City resources over time. Vision SMTX notes that outlying development that demands higher levels of police, fire, and emergency services coverage can lengthen response times and generate the need for more facilities and personnel. Location can also affect other important City services; for instance, outlying residential development in areas without existing amenities often adds pressure for the City to develop and maintain new parkland, which can spread parks resources out more thinly over a larger parks system.

Data centers require less police, fire, and emergency services coverage than single-family subdivisions – and have little to no impact on other City services like parks and open space.

Given the sensitive nature of data centers – as well as the large amount of expensive technology that they hold – owners operate their own on-site security, which deters crime and reduces the need for police services; they also invest in fire suppression systems to protect their investment. In contrast, even in safe and secure subdivisions, residents often expect their City to ensure a certain level of police presence, and the large volume of households increases the probability that one or more will likely require fire or emergency services at some point.

Likewise, residents often expect their City to invest in parks and other recreational amenities near their homes. This becomes particularly important in outlying areas without easy access to existing parkland, pressuring the City to acquire and develop new parks spaces that ultimately serve a limited number of households. Data centers produce no such demand, allowing the City to use its resources to maintain and improve its existing parks system without stressing existing resources.

Finally, as described above, the project intends to use CCSUD for water service and PEC for electricity, and thus will not require City service for either utility.

- **Limited Connectivity.** Second, the limited connectivity to the City means that traffic traveling to and from the Property will largely be concentrated on one roadway (Francis Harris Lane); higher-volume uses would result in greater ‘wear and tear’ on this roadway and will require more maintenance and more frequent replacement.

Data centers produce very little traffic compared to other uses. Residential subdivisions generally feature a large volume of morning and evening commuting, in addition to trips to grocery stores, libraries, friends’ homes, and more. Commercial uses generally operate by attracting as many customers as possible. Industrial uses often feature heavy trucks dropping off and picking up various materials. Data centers, instead, feature none of these dynamics. They are secure facilities that feature fewer people than a residential subdivision and generally do not attract outside visitors. As a result, data centers have a meaningfully lower impact on roadway infrastructure and maintenance.

For reference, the Urban Land Institute, a respected land-use think tank, has reported that data centers “require fewer employees to operate than most other commercial properties, leaving minimal impacts on traffic in surrounding areas.”

The other major consideration related to fiscal sustainability is the Property’s ability to produce tax revenues that can help cover the costs of the services described above.

While single-family subdivisions often generate new tax revenues, they also meaningfully increase demand for City services. Vision SMTX notes that development patterns similar to that previously proposed for this Property (a 470-unit single-family subdivision) have the “the “Highest cost to serve (per new person) of all Place Types” and “generates [the] largest increase in new streets to maintain.”<sup>1</sup>

Data centers, instead, often produce meaningful new property tax revenues – buoyed by the types of improvements needed to house expensive computing technology – while generating a *lower* demand on City services. While Vision SMTX found that the Commercial/Employment Low Place Type (the designation requested for the Property) generally has a negative fiscal impact it also caveated this finding by specifying that the “value of non-residential development will vary fiscal impact” and that “[i]mpact on calls for service varies by use (e.g. retail more, industrial less).” In this case, as demonstrated above, the data center use in particular has a *positive* fiscal impact, producing meaningful new revenues with only a limited need for City services.

A briefing in the American Planning Association’s *Zoning Practice* publication sums up the comparison between the previous proposed use (single-family subdivision) and the current proposed use (data center) concisely, stating that data centers can be “highly desirable from an economic development perspective because they often generate a large property tax surplus that can subsidize more service-intensive land uses, such as single-family homes.”

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<sup>1</sup> Technically, the Preferred Scenario Map currently designates the Property for Conservation/Cluster, which primarily consists of parks, open space, and agricultural or ranchland. However, Vision SMTX notes that Conservation/Cluster actually “has the potential to perform like a Neighborhood Low or Medium Place Type if a cluster-style development is pursued.” In this case, the Property has most recently been planned for a new subdivision consisting of an estimated 470 detached single-family homes, a development pattern that more closely reflects the Neighborhood Low-New Place Type (primary land use: detached single-family).

# Austin American-Statesman

STATESMAN.COM • TUESDAY, DECEMBER 23, 2025 • VOL. 155, NO. 123 • \$3.00

1300

## ERCOT CEO: No data center, worries

Power-hungry facilities will disconnect during severe grid emergencies, he says

**By Claire Hao**  
STAFF WRITER

An unprecedented surge of data centers could be coming to Texas, prompting concerns over how the state's power grid — which infamously suffered deadly blackouts in 2021 — will keep up with the breakneck de-

mand.

According to Pablo Vegas, CEO of the Electric Reliability Council of Texas, residents don't need to be alarmed: A new state law requires data centers to disconnect in phases at the grid operator's discretion during a severe grid emergency.

"If a data center connects onto

our grid and the grid gets tight, they have to turn off before we (have rotating outages)," Vegas said in a recent interview with Hearst Newspapers.

As Big Tech companies race to develop artificial intelligence, a huge pipeline of data centers — some planning to use as much electricity as entire cities — are seeking to come to Texas, attracted to the state's plentiful land and relatively cheap energy for industrial customers.

As a result, near-term electricity demand is expected to grow magnitudes faster in Texas than anywhere else in the country, according to an Energy Department analysis.

Even if many of the data centers proposed for Texas aren't ultimately built, ERCOT has forecast that electricity demand across its system could increase 70% by 2031.

"It's really been just something that we've never experi-

enced before in the history of ERCOT," Vegas said.

The Trump administration has embraced Big Tech's AI push, arguing that the United States has to outcompete adversaries such as China in developing the potentially transformative technology.

Recently, Gov. Greg Abbott appeared alongside Google's CEO as the tech giant announced \$40 billion in AI-relat-

**ERCOT continues on A2**

# ERCOT

From page A1

ed investments across the state, which would make Texas home to more Google data centers than anywhere else in the world.

But in welcoming data centers, Texas leaders — particularly Lt. Gov. Dan Patrick — have also raised concerns about how the influx could jeopardize the state's power grid.

Those concerns manifested in Senate Bill 6, a law Abbott signed in June that received some push-back from the data center industry.

Much of the debate focused on a first-of-its-kind requirement that data centers and other non-critical industrial facilities would have to shut off if ERCOT ordered rotating outages. In 2021, these outages only affected everyday residents and businesses.

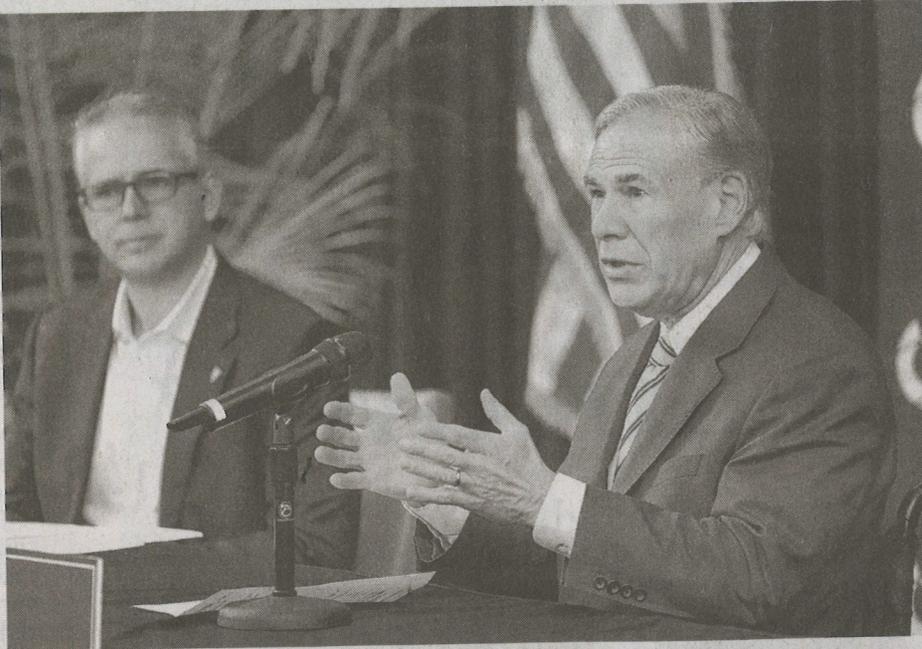
## Reducing reliance

But, according to Vegas, the new law goes further than that.

ERCOT will have the authority to ask data centers to reduce their reliance on the grid before it ever reaches the point of needing to order rotating outages, he said.

At first, the requests would be voluntary, and data centers would get 24-hour notice and payments for participating.

But if grid conditions continued to deteriorate, the requests would become mandatory: Data centers with on-site backup power would be required to switch to their own resources or cut back



Melissa Phillip/Houston Chronicle

**Pablo Vegas, CEO of ERCOT, left, says a law signed by Gov. Greg Abbott safeguards the Texas power grid during emergencies.**



Aaron E. Martinez/Austin American-Statesman

**Construction continues at the Sabey Data Center in Round Rock this past summer, part of the surge in Lone Star State data centers.**

on electricity consumption, Vegas said.

If ERCOT exhausted nearly all of its other tools to prevent rotating outages, it would be allowed to tell data centers with significant backup power to disconnect from the grid, Vegas said.

Thus, ERCOT doesn't

have to worry that there won't be enough new power plants built in the coming years to meet projected data center demand, Vegas said, because those facilities would have to be flexible in their power consumption during a grid emergency.

"That effectively means that all of this new growth that's coming cannot contribute to the grid going into (rotating outages). It has to all come off before," Vegas said. "That was an unlock for the state of Texas, to be able to say we can accommodate the growth that's coming."

## Power bottleneck

Though the new law has "solved" the supply-and-demand issue, data center growth is still constrained by how quickly long-distance power lines can be built across Texas, Vegas said.

In total, Texas could need \$33 billion in new transmission lines, ERCOT estimated, which would be the largest expansion of the state's electrical network since 2013. The cost of these projects would be spread out among all ERCOT cus-

tomers across the state.

ERCOT has already approved a few big-ticket transmission projects: a \$13.8 billion network in West Texas, as well as a \$9.4 billion grid "super-highway" cutting through the Houston area.

But new transmission projects take years to build, slower than new data centers can be constructed.

It's possible that in the coming years, parts of the grid could become saturated. That would slow down connecting new data centers to the grid in that region until the local utility can build more power lines, Vegas said.

The Texas power industry's challenge is to figure out how to build transmission lines quickly, he said — at the same time that local communities across Texas are already beginning to protest huge power-line projects.

Looking ahead to this winter, Vegas said "the grid is probably in the most reliable condition that it's been in since Winter Storm Uri," also known as the February 2021 freeze.

That's because ERCOT has added a lot more electricity supply since that storm and Texas hasn't yet seen the massive electricity demand growth that's forecast for the next couple of years, he said.

And in the longer term, ERCOT won't accept more data centers than the grid is able to handle, Vegas said.

"We're not going to allow the grid to grow to a capacity where it can't be operated reliably," he said.

# HREP

## RE-ZONING HEARING

JANUARY 2026

## HIGHLANDER REAL ESTATE PARTNERS

Currently platted for 500 homes, Highlander Real Estate Partners is proposing a data center development at 904 Francis Harris Lane - a less intensive use that serves as a strategic buffer between heavy industrial and rural residential areas. HREP is seeking to rezone the property to Light industrial - Data Center, with City Staff recommendation, prioritizing environmental stewardship, sustainable development, and a smarter approach to growth in San Marcos.



### RESTRICTIVE COVENANT PROTECTIONS BINDING COMMITMENTS FOR P&Z AND CITY COUNCIL

#### WATER USAGE LIMITED



RC limits use by 50% from CCSUD allocation



#### SOUND CONTROL



RC limits noise to 75 decibels maximum



#### ENHANCED DRAINAGE



Enhanced detention requirements in RC



#### IMPERVIOUS COVER



Beats code requirements for Light Industrial zoning



#### PROHIBITED USES



No distribution centers or waste facilities allowed



#### WORKER PROTECTIONS



Committed to worker safety standards



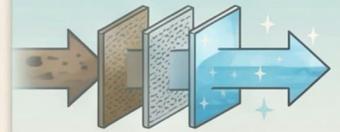
#### LEED CERTIFIED BUILDING



Building designed to LEED certification standards



#### WATER QUALITY



Total suspended solids removal of 80%



CONTACT

# HIGHLANDER



# HREP

RE-ZONING HEARING

JANUARY 2026

Upon recording, please return to:  
Highlander SM One, LLC  
2505 Allston Lane  
Austin, TX 78746  
Attn: John Maberry

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

**DEED**

STATE OF TEXAS           §  
  §           KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF HAYS       §

Corridor Title Co. GF# 21-4431-C

THAT, ENGIE DEVELOPMENT, LLC, a Delaware limited liability company, whose address is 1360 Post Oak Blvd., Suite 400, Houston, TX 77056 (herein referred to as "Grantor"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, and the further consideration of the execution and delivery by Grantee of one certain promissory note of even date herewith in the principal sum of \$3,087,500.00, payable to the order of FIRST FINANCIAL BANK, N.A., a national association ("Lender"), and bearing interest as therein provided, the payment of which note is secured by the Vendor's Lien herein retained, and is secured by a Deed of Trust of even date herewith, has GRANTED, SOLD AND CONVEYED and by these presents does GRANT, SELL and CONVEY unto HIGHLANDER SM ONE, LLC, a Texas limited liability company, whose address is 2505 Allston Lane, Austin, TX 78746, their successors and assigns (herein referred to as "Grantee"), the property more fully described on Exhibit A attached hereto and incorporated herein for all purposes by this reference (the "Property"), together with all improvements located thereon and all rights and appurtenances thereto in any wise belonging to Grantor; subject only to those items described on Exhibit B attached hereto and incorporated herein for all purposes (the "Permitted Encumbrances").

TO HAVE AND TO HOLD the above-described Property, subject only to the Permitted Encumbrances, together with all and singular the rights and appurtenances thereto in any wise belonging to Grantor, unto the said Grantee, its successors and assigns FOREVER, and Grantor does hereby bind itself and its successors and assigns to WARRANT AND FOREVER DEFEND all and singular the Property unto the said Grantee, its successors and assigns, against every person whomsoever, lawfully claiming or to claim the same or any part thereof.

COVENANTS. As a part of the consideration supporting this Deed, Grantee hereby covenants and agrees, on its own behalf and on behalf of its successors and assigns, that Grantee shall not use, nor allow to be used, the Property in any manner that would interfere with the continued use and operation of the property more fully described on Exhibit C attached hereto and incorporated herein for all purposes by this reference (the "Retained Property"), as a power plant in the same manner as used by Hays Energy, LLC ("Hays Energy") as of January 5, 2017 (the "Interference Restriction"); *provided, however*, that the development, subdivision, and use of the

Property for single family residential purposes shall not be deemed to violate the Interference Restriction.

As a further part of the consideration supporting this Deed, specifically with respect to the Retained Property and the Interference Restriction, Grantee agrees and covenants not to contest, protest, or otherwise challenge any application that Hays Energy or any subsidiary, affiliate or assignee of Hays Energy or Vistra Corp., formerly known as Energy Future Holdings Corp. and TXU Corp. (collectively referred to as "Applicant"), may file or make to any local, state or federal agency, including but not limited to the Texas Commission on Environmental Quality ("TCEQ"), the Nuclear Regulatory Commission ("NRC"), U.S. Army Corps of Engineers, and/or the United States Environmental Protection Agency, for any environmental, development, construction, operation or other authorization, including, but not limited to any local, state or federal permit, license, registration or any other authorization for any facility or any portion of a facility, any sources of air emissions or contaminant discharge, or any other structure or process in Hays County, Texas, or otherwise take a position adverse to Applicant, in any proceeding, in any form or forum, including, but not limited to, before or to the NRC, the TCEQ, the Texas State Office of Administrative Hearings, and/or state or federal court (the "Protest Restriction"). Grantee's agreement and covenant not to contest, protest, or otherwise challenge any such actions or applications includes Grantee's express agreement and covenant not to file any public comments, requests for party status, motions to overturn, motions for reconsideration, objections or any other administrative or judicial appeals regarding such application or any authorization that Applicant obtains as a result of such application. Specifically with respect to the Retained Property and the Interference Restriction, Grantee's agreement and covenant not to contest, protest, or otherwise challenge such application also extends to any subsequent amendment or modification of any authorization that Applicant obtains or seeks to obtain as a result of any such application. Specifically with respect to the Retained Property and the Interference Restriction, Grantee further agrees and covenants not to seek or pursue revocation of any authorization that Applicant obtains or has previously obtained (whether as a result of such application or otherwise), or to attempt to enjoin, cease or restrain any operations or activities under such authorization, or take a position adverse to Applicant in any such revocation or injunction action, or in any other way attempt to otherwise constrain any operations or activities under such authorization, in any form or forum whatsoever.

As a further part of the consideration supporting this Deed, Grantee covenants that the Property will not be used for the commercial production or commercial generation of electricity in any form, nor will it be used for the siting of a commercial power station or energy storage facility of any kind (the "Power Generation Restriction", and collectively with the Interference Restriction and the Protest Restriction, the "Restrictions").

The Restrictions shall be covenants running with, touching, and encumbering the Property, and benefiting the Retained Property, binding upon the Grantee and all successors in interest or title, transferees, vendees, lessees, mortgagees, and assigns who are owners and/or users of the Property. Hays Energy may enforce the provisions hereof by any appropriate legal action.

Each and every contract, deed, or other instrument hereafter executed conveying the Property or portion thereof (excluding instruments granting security interests) shall expressly

provide that such conveyance is subject to this restrictive covenant, provided, however, that the Restrictions shall survive and be effective regardless of whether such contract, deed or other instrument hereafter executed conveying the Property or portion thereof provides that such conveyance is subject to the restrictive covenant.

The covenants given by each of Grantor and Grantee in this Deed are material to Grantor and Grantee and shall be permanent covenants running with the land, and each party shall be entitled to specific performance of the covenant of the other party. Any violation or breach of the covenants of this paragraph may be enforced in law or in equity, including, without limitation, injunction to cease any violation and to enforce specific performance hereof.

[signature pages follow]

EXECUTED to be effective as of the 28 day of January, 2022.

GRANTOR:

*(Handwritten initials)*

ENGIE Development, LLC,  
a Delaware limited liability company

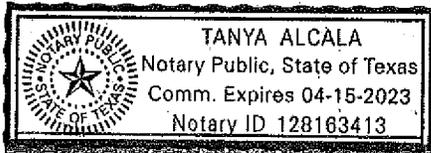
By: [Signature]  
Name: Stefaan Sercu  
Title: President and CEO

STATE OF TEXAS        §  
                                     §  
COUNTY OF HARRIS   §

This instrument was acknowledged before me on January 27, 2022, by Stefaan Sercu, the President and CEO of ENGIE Development, LLC, a Delaware limited liability company, on behalf of said company.

[Signature]  
Notary Public

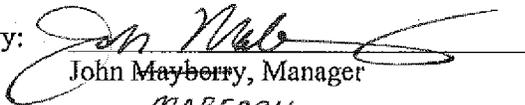
(PERSONALIZED SEAL)



GRANTEE:

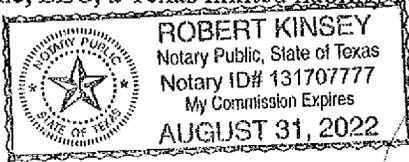
Highlander SM One, LLC,  
a Texas limited liability company

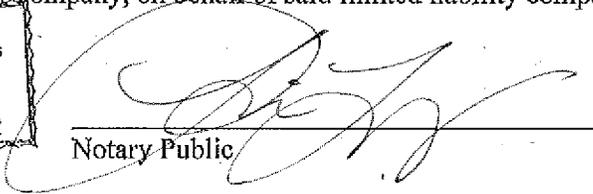
By: Highlander Real Estate Partners, LLC,  
a Delaware limited liability company,  
its sole Manager,

By:   
John Maberry, Manager  
MABERRY  
(M) (JM)

STATE OF TEXAS       §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 28<sup>th</sup> day of JANUARY, 2022, by John Maberry, Manager of Highlander Real Estate Partners, LLC, a Delaware limited liability company, on behalf said limited liability company in its capacity as sole Manager of Highlander SM One, LLC, a Texas limited liability company, on behalf of said limited liability company.



  
Notary Public

(PERSONALIZED SEAL)

Grantee's Address for Tax Purposes: 2505 Allston Lane, Austin, TX 78746

**EXHIBIT "A"**  
**THE PROPERTY**

**METES AND BOUNDS**

**BEING** a 136.912 acre (5,963,888 square feet) tract of land less and except a one acre tract reserved for cemetery purposes for a total Net Acreage of 135.912 (5,920,320 square feet) of land situated in the A.M. Eshnarizar Survey, Abstract No. 6, Hays County, Texas; and being a all of that certain 136.96 acre tract (less and except one acre) in instrument to Hays Energy Limited Partnership in Document No. 9918986 of the Official Public Records of Hays County; and being more particularly described as follows:

**BEGINNING** at a mag nail found in concrete on the intersection of the westerly line of Francis Harris Lane (variable public width public right-of-way) with the southeasterly line of Grant Harris Road (30 feet wide private drive) marking the northeast corner of the said 136.96 acre tract and the east corner of that certain 1.00 acre tract described in Volume 4187 Page 894 of the Official Public Records of Hays County;

**THENCE**, along the westerly right-of-way line of Francis Harris Lane the following ten (10) courses and distances:

1. South 07°26'45" East, 744.57 feet to a 3-inch metal fence post found for corner;
2. South 07°41'05" East, 396.75 feet to a 2-inch metal fence post found for corner;
3. South 07°47'16" East, 523.44 feet to a 3-inch metal fence post found for corner;
4. South 07°38'01" East, 1774.02 feet to a 3-inch metal fence post found for corner;
5. South 01°00'30" East, 10.17 feet to a 3-inch metal fence post found for corner;
6. South 08°04'14" West, 10.46 feet to a 3-inch metal fence post found for corner;
7. South 18°48'44" West, 12.34 feet to a 3-inch metal fence post found for corner;
8. South 25°03'13" West, 19.77 feet to a 3-inch metal fence post found for corner;
9. South 37°42'10" West, 23.94 feet to a 3-inch metal fence post found for corner;
10. South 41°44'05" West, 787.05 feet to a 3-inch metal fence post found for corner;

**THENCE**, departing the westerly right-of-way line of Francis Harris Lane and following along the northeasterly line of that certain 75.9 acre tract described as tract No. One (1) in instrument to John D. Doster and Eva J. Doster In Volume 265 Page 178 Deed Records Hays County the following three (3) courses and distances:

1. North 43°42'49" West, 225.80 feet to a ½-inch capped iron rod found for corner;
2. North 44°31'20" West, 542.09 feet to a ½-inch iron rod with a plastic cap stamped "KHA" set for corner;
3. North 44°53'03" West, 622.24 feet to a 3-inch metal post found for corner;

**THENCE**, South 45°02'40" West, 542.77 feet along the northwesterly line of said 75.9 acre tract to a 60D nail with washer stamped "BYRN SURVEY" found for corner;

**THENCE**, departing the aforesaid 75.9 acre tract and following along the northeasterly line of that certain 50.00 acre tract described in instrument to Donald Tuff in Volume 312 Page 837 in the Deed Records of Hays County the following three (3) courses and distances:

1. North 45°16'38" West, 256.47 feet to a wood post found for corner;
2. North 45°21'46" West, 733.15 feet to a wood post found for corner;
3. North 45°04'42" West, 413.36 feet to a ½-inch iron rod found for corner;

**THENCE**, North 44°35'39" East, 409.86 feet to a 3-inch iron fence post found for corner along the southeasterly line of that certain 4.56 acre tract described in instrument to Hays Energy Limited Partnership in Volume. 1512, Page 495 of the Official Public Records of Hays County;

**THENCE**, North 44°25'59" East, 410.99 feet to a ½-inch capped iron rod found for corner along the southeasterly line of that certain 4.56 acre tract described in instrument to David Alvarado-Vasquez and spouse Claudia V. Alvarado Document. No. 18044130 of the Official Public Records of Hays County;

**THENCE**, along the southeasterly right-of-way line of the said Grant Harris Road the following seven (7) courses and distances:

1. North 44°43'49" East, 411.16 feet to a ½-inch capped iron rod found for corner;
2. North 44°58'05" East, 407.88 feet to a ½-inch iron rod with a plastic cap stamped "KHA" set for corner;
3. North 44°51'54" East, 404.86 feet to a 100D nail found for corner;
4. North 44°32'48" East, 405.35 feet to a ½-inch capped iron rod found for corner;
5. North 44°19'19" East, 410.59 feet to a ½-inch capped iron rod found for corner;
6. North 45°29'28" East, 450.37 feet to a ½-inch capped iron rod found for corner;

**THENCE**, North 45°29'21" East, 169.58 feet along southeasterly right-of-way line of Grant Harris Road to the POINT OF BEGINNING and containing 136.912 acres in Hays County, Texas Less and Except that certain 1.00 acre tract reserved for cemetery purposes, and being more particularly described as follows:

**COMMENCING** at a ½-inch drill hole in a 3-inch metal fence post found at a three-way fence corner for an interior corner said 136.96 acre tract;

**THENCE**, North 44°04'47" East 625.64 feet along a fence line to a ½-inch iron rod with a plastic cap stamped "KHA" to the POINT OF BEGINNING of the Save and Except described herein;

**THENCE** the following three (3) courses and distances across the said 136.96 acre tract:

1. North 44°04'47" East, 208.71 feet to a to a ½-inch iron rod with a plastic cap stamped "KHA" set for corner;

2. South 45°55'13" East, 208.71 feet to a to a ½-inch iron rod with a plastic cap stamped "KHA" set fore comer;
3. South 44°04'47" West, 208.71 feet to a to a ½-inch iron rod with a plastic cap stamped "KHA" set for corner;

**THENCE**, North 45°55'13" West 208.71 feet to the **POINT OF BEGINNING**, and containing 1.000 acre (43,560 square feet), for a total of 135.912 acres of land in Hays County, Texas.

The basis of bearing for this description is the Texas State Plane Coordinate System Grid South Central Zone (FIPS 4204) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

**EXHIBIT "B"**  
**THE PERMITTED EXCEPTIONS**

1. Document No. 17003581, of the Official Public Records of Hays County, Texas.
2. Subject to the rights of ingress and egress in and to a cemetery, as reserved in Deed recorded in Volume 61, Page 509, Deed Records of Hays County, Texas.
3. Easement awarded to Lower Colorado River Authority, by Judgment dated October 18, 1972, under Cause No. 9,413, District Court Records, Hays County, Texas, as recorded in Volume R, Page 462, Civil Minute Records of District Court of Hays County, Texas, and amended by instrument recorded in Volume 1348, Page 104, Official Public Records of Hays County, Texas.
4. Easement granted to Pedernales Electric Cooperative, Inc., recorded in Volume 857, Page 640, Official Public Records of Hays County, Texas.
5. Easements, terms, conditions, and stipulations in that certain Easement Agreement, as recorded in Document No. 9926160, of the Official Public Records of Hays County, Texas.
6. Easement granted to Crystal Clear W.S.C., recorded in Volume 3826, Page 630, Official Public Records of Hays County, Texas.
7. Taxes or special assessments of York Creek Improvement District as provided by law.
8. Location of overhead utility lines, utility poles, guy anchors, electric manhole(s), sign(s), within the boundary of subject property and being situated outside any designated easement, together with all easement rights appurtenant thereto, as shown on Survey dated December 16, 2021, prepared by John G. Mosier, Registered Professional Land Surveyor No. 6330.
9. Encroachment and/or protrusion of fences the boundary lines of subject property, together with any assertion of ownership of land lying between said fences and the boundary lines of subject property, as shown on Survey dated December 16, 2021, prepared by John G. Mosier, Registered Professional Land Surveyor No. 6330.
10. Terms, conditions and restrictions as set forth in that certain Deed dated 1-28-2022, from Hays Energy, LLC, as Grantor to ENGIE Development, LLC, as Grantee, recorded in Document No. 22004594 in the Official Public Records of Hays County, Texas.

**EXHIBIT "C"**  
**THE RETAINED PROPERTY**

DESCRIPTION OF 100.87 ACRES, MORE OR LESS OF LAND AREA BEING ALL OF LOT 1, HENK ADDITION, AS RECORDED IN VOLUME 9, PAGE 27 OF THE HAYS COUNTY PLAT RECORDS, LESS AND EXCEPT THAT TRACT DESCRIBED AS 7.845 ACRES IN A DEED FROM HAYS ENERGY LIMITED PARTNERSHIP TO L.C.R.A. DATED FEBRUARY 16, 2000 AND RECORDED IN VOLUME 1635, PAGE 88 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Beginning at a 1/2" iron rod found with a plastic cap stamped "Byrn Survey" in the occupied north line of that tract described as 0.15 acres in a quit claim deed from Agnes Henk to Hays Energy Limited Partnership dated June 21, 1999 and recorded in Hays County Document No. 9914620 of the Hays County Deed Records for the common southwest corner of Lot 1, Henk Addition and the southeast corner of that 2.71 acre tract dedicated to the Public by the plat recorded in Volume 9, Page 27 of the Hays County Plat Records;

Thence leaving the Hays Energy Limited Partnership 0.15 acre tract and the Place of Beginning with the common southwest line Lot 1, Henk Addition and the east line of the 2.71 acre tract dedicated to the Public, as shown on that plat numbered 24939 - 00 - d dated September 5, 2000 as prepared for Hays Energy Limited Partnership by Byrn & Associates, Inc. of San Marcos, Texas, N 42 degrees 30' 33" W (this course being the Bearing Basis for this description) 2558.92 feet to a 1/2" iron rod found with a plastic cap stamped "Byrn Survey";

Thence with a right-breaking curve having the following characteristics: central angle = 86 degrees 55' 28", radius = 270.00, arc length = 409.62 feet and a chord which bears N 00 degrees 57' 04", E 371.45 feet to a 1/2" iron rod found with a plastic cap stamped "Byrn Survey";

Thence with the common northwest line of Lot 1, Henk Addition and the southeast line of the 2.71 acre tract dedicated to the Public, the following three courses:

1. N 44 degrees 24' 50" E 437.79 feet to a 1/2" iron rod found with a plastic cap stamped "Byrn Survey"
2. with a left-breaking curve having the following characteristics: central angle = 48 degrees 00' 50", radius = 270.00 feet, arc length = 226.26 feet and a chord which bears N 20 degrees 24' 26" E 219.70 feet to a 1/2" iron rod found with a plastic cap stamped "Byrn Survey", and
3. N 03 degrees 35' 49" W 68.34 feet to a 1/2" iron rod found with a plastic cap stamped "Byrn Survey" for the common northwest corner of Lot 1, Henk Addition and the northeast corner of the 2.71 acre tract dedicated to the Public and being in

the occupied south line of that tract described as 436.54 acres in a deed from Betty Jo Jackson Crocker to B. Naylor Morton dated August 15 , 1989 and recorded in Volume 797, page 321 of the Hays County Official Public Records;

Thence leaving the 2.71 acre tract dedicated to the Public with the common north line of Lot 1, Henk Addition and a south line of the Morton tracts, S 88 degrees 42' 07 " E 666.02 feet to a calculated point;

Thence leaving the south line of the Morton tract and entering Lot 1, Henk Addition, S 01 degrees 17' 53" W 24.26 feet to an iron rod found with a plastic cap stamped "LCRA" for the north corner of the previously mentioned LCRA 7.845 acre tract;

Thence with the northwest line of the LCRA tract, the following three courses:

1. S 17 degrees 48' 59" W 310.95 feet to an iron rod found with a plastic cap stamped "LCRA",
2. S 79 degrees 39' 13" W 51.02 feet to an iron rod found with a plastic cap stamped "LCRA", and
3. S 17 degrees 51' 21" W 172.47 feet to an iron rod found with a plastic cap stamped "LCRA" for the west corner of the LCRA tract;

Thence with the southwest line of the LCRA tract, S 72 degrees 11' 58" E 702.19 feet to a calculated point that falls in a chain link fence corner post for the south corner of the LCRA tract;

Thence with the southeast line of the LCRA tract, N 1 7 degrees 4 7' 57" E 507.50 feet to an iron rod found with a plastic cap stamped "LCRA" for the east corner of the LCRA tract;

Thence with the northeast line of the LCRA tract, N 72 degrees 12' 03" W 656.94 feet to the previously mentioned north corner of the LCRA 7.845 acre tract;

Thence leaving the LCRA, N 01 degrees 17' 53" E 24.26 feet to a calculated point in the common north line of Lot 1, Henk Addition and the south line of the Morton tract;

Thence with said common line, S 88 degrees 42' 07" E 1237.71 feet to a 1/2" iron rod found for the northeast corner of Lot 1, Henk Addition and an interior corner of the Morton tract;

Thence with the east line of Lot 1, Henk Addition, the following three courses:

1. with a west line of the Morton tract, S 09 degrees 32' 16" E 56.84 feet to a 6" cedar post for an angle point in fence,
2. with a west line of the Morton tract, S 00 degrees 00' 39" W 1380.77 feet to a 1/2" iron rod found for a southwest corner of the Morton tract and a northwest corner of that tract described as 43.58 acres in a deed from the Estate of Hanno F. Guenther, Sr. to Sharon Guenther and Hanno F.

Guenther, Jr. dated December 20, 1993 and recorded in Volume 1040, Page 211 of the Hays County Official Public Records, and

3. with the west line of the Guenther tract, S 00 degrees 35' 43" E 1357.16 feet to a 1/2" iron rod found for the southeast corner of Lot 1, Henk Addition and the northeast corner of the previously mentioned Hays Energy 0.15 acre tract;

Thence leaving the Guenther tract with the common south line of Lot 1, Henk Addition and the north line of the Hays Energy 0.15 acre tract, S 89 degrees 15' 26" W 582.34 feet to the Place of Beginning.

There are contained within these metes and bounds 100.87 acres, more or less, of land area as prepared from public records and a survey made on the ground on September 5, 2000 by Byrn and Associates, Inc. of San Marcos, Texas.

SAVE AND EXCEPT:

7.845 ACRE TRACT OWNED BY LCRA TRANSMISSION SERVICES CORPORATION:

PART OF LOT 1 OF HENK ADDITION AS SHOWN ON THE MAP RECORDED IN PLAT BOOK 9, PAGE 27 OF THE MAP RECORDS OF SAID HAYS COUNTY, TEXAS, EMBRACING ALL OF A 7.845 ACRES TRACT OF LAND DESCRIBED IN VOLUME 1635, PAGE 88, OF SAID DEED RECORDS.

COMMENCING AT A 1/2 INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID LOT 1.

THENCE NORTH 88 DEGREES 42 MINUTES 34 SECONDS WEST, ALONG THE NORTH LINE OF SAID LOT 1, A DISTANCE OF 1,237.79 FEET TO A POINT.

THENCE SOUTH 01 DEGREE 17 MINUTES 53 SECONDS WEST, A DISTANCE OF 24.26 FEET TO A 1/2 INCH IRON ROD SET FOR THE POINT OF BEGINNING OF THE HEREIN DESCRIBED TRACT.

THENCE SOUTH 72 DEGREES 12 MINUTES 20 SECONDS EAST, A DISTANCE OF 657.00 FEET TO A 1/2 INCH IRON ROD FOUND FOR A CORNER.

THENCE SOUTH 17 DEGREES 47 MINUTES 40 SECONDS WEST, A DISTANCE OF 507.50 FEET TO A POINT FOR A CORNER.

THENCE NORTH 72 DEGREES 12 MINUTES 20 SECONDS WEST, A DISTANCE OF 702.00 FEET TO A 1/2 INCH IRON ROD FOUND FOR A CORNER.

THENCE NORTH 17 DEGREES 47 MINUTES 40 SECONDS EAST, A DISTANCE OF 172.50 FEET TO A 1/2 INCH IRON ROD FOUND FOR A CORNER.

THENCE NORTH 79 DEGREES 43 MINUTES 19 SECONDS EAST, A DISTANCE OF 51.00 FEET TO A 1/2 INCH IRON ROD FOUND FOR A CORNER.

THENCE NORTH 17 DEGREES 47 MINUTES 40 SECONDS EAST, A DISTANCE OF 311.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 4,394,368 SQUARE FEET OR 100.881 ACRES, MORE OR LESS.

NOTE: COMPANY DOES NOT REPRESENT THAT THE ABOVE ACREAGE AND/OR SQUARE FOOTAGE CALCULATIONS ARE CORRECT.

TRACT 1 ALSO BEING DESCRIBED IN SPECIAL WARRANTY DEED RECORDED IN DOCUMENT 9914621, HAYS COUNTY, TEXAS; SAVE AND EXCEPT 2.71 ACRES DEDICATED TO THE PUBLIC FOR ROADWAY PURPOSES IN THE FINAL PLAT OF LOT 1, HENK ADDITION TO HAYS COUNTY, TEXAS, DATED APRIL 14, 1999 RECORDED IN PLAT BOOK 9, PAGE 27; AND FURTHER SAVE AND EXCEPT PROPERTY DESCRIBED IN SPECIAL WARRANTY DEED RECORDED IN DOCUMENT 3767 BOOK OFFICIAL PUBLIC RECORDS IN VOLUME 1635 PAGE 88, HAYS COUNTY, TEXAS.

**THE STATE OF TEXAS  
COUNTY OF HAYS**

I hereby certify that this instrument was FILED on the date and the time stamped hereon by me and was duly RECORDED in the Records of Hays County, Texas.

22004858 DEED  
02/01/2022 09:56:01 AM Total Fees: \$70.00

Elaine H. Cárdenas, MBA, PhD, County Clerk  
Hays County, Texas



## WARRANTY DEED RESERVING VENDOR'S LIEN

312532

From: JEROME DIETERT and MARGARET DIETERT  
 To: DONALD W. TUFF and wife, GERMAINE TUFF

THE STATE OF TEXAS                   §  
   §     KNOW ALL MEN BY THESE PRESENTS:  
 COUNTY OF HAYS                       §

That we, JEROME DIETERT and MARGARET DIETERT, of Comal County, Texas, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other valuable consideration to us cash in hand paid and secured to be paid by DONALD W. TUFF and wife, GERMAINE TUFF, the receipt of which is hereby conclusively acknowledged and confessed, and the execution and delivery of those four (4) vendor's lien promissory notes of even date herewith as follows:

1. That certain promissory note in the amount of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00) dated June 27, 1978, executed by Donald W. Tuff and wife, Germaine Tuff, and payable to the order of Margaret Dietert as therein provided;
2. That certain promissory note in the amount of THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) dated June 27, 1978, executed by Donald W. Tuff and wife, Germaine Tuff, and payable to the order of Margaret Dietert as therein provided;
3. That certain promissory note in the amount of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00) dated June 27, 1978, executed by Donald W. Tuff and wife, Germaine Tuff, and payable to the order of Jerome Dietert as therein provided;
4. That certain promissory note in the amount of THIRTY THOUSAND AND NO/100 DOLLARS (\$30,000.00) dated June 27, 1978, executed by Donald W. Tuff and wife, Germaine Tuff, and payable to the order of Jerome Dietert as therein provided;

and it being provided in each of said notes that failure to pay any installment thereof when due may at the option of the holder mature said entire indebtedness and the lien herein reserved become subject to foreclosure; said notes also providing for ten percent (10%) attorney's fee if not paid in full at maturity and placed in the hands of an attorney for collection, collected by law or through the probate court.

v. 312 838

HAVE GRANTED, BARGAINED, SOLD and conveyed and by these presents do GRANT, BARGAIN, SELL and CONVEY unto the said DONALD W. TUFF and wife, GERMAINE TUFF, of Hays County, Texas, the following described property situated in the Counties of Hays and Comal, State of Texas, to-wit:

BEING that certain 100 acres, more or less, situated in Hays and Comal Counties, Texas, and being the same property described as Tracts (A) and (B) in a conveyance from Richard O. Glenewinkel et ux to Jerome Dietert et ux by deed dated May 11, 1950, recorded in Book No. 146, pages 415-417 of the Deed Records of Hays County, Texas, and more particularly described as follows, to-wit:

TRACT (A): All that certain tract, piece or parcel of land situated in Hays County, Texas, being 50 acres, more or less, being the N. E. part of a 109.52 acre tract out of Subdivision No. 149, of the A. M. Esnaurizar Eleven League Grant, and being described by metes and bounds as follows:

BEGINNING at a post set at the North corner of said 109.52 acre tract;

THENCE with its N. E. line S. 44° 45' E. 507.5 vrs. to a pile of rocks, the East corner of said 109.52 acre tract;

THENCE with the S.E. line of said 109.52 acre tract, S. 45° 12' W. 729.5 vrs. to an iron pin for South corner of this tract;

THENCE with fence N. 28° 27' W. 123.41 vrs. to an iron pin for corner;

THENCE with the boundary line of the Richard O. Glenewinkel 50 acre tract, N. 45° 12' E. 190.9 vrs. to an iron pin for East corner of the Richard O. Glenewinkel tract;

THENCE with the N. E. line of said Richard O. Glenewinkel tract, N. 44° 45' W. 395.07 vrs. to an iron pin in the N. W. line of Subdivision No. 149 for West corner of this tract, and North corner of the Richard O. Glenewinkel tract;

THENCE with said N. W. line N. 45° 53' E. 504 vrs. to the Place of Beginning.

The foregoing is the same tract of land which was set apart and allotted to Carl W. Glenewinkel in the certain deed of partition by and between Emma Glenewinkel et al, dated June 8, 1942, recorded in Volume 125, pages 32-35 of the Deed Records of Hays County, Texas, reference to which is hereby made, and is the same property conveyed by Carl W. Glenewinkel to Richard O. Glenewinkel by deed dated April 13, 1950, recorded in Volume 146, pages 405-406 of the Hays County Deed Records.

TRACT (B): All that certain tract, piece or parcel of land situated in Hays and Comal Counties, being 50 acres, more or less, being known as the West part of a 109.52 acre tract out of Subdivision No. 149 of the A.M. Esnaurizar Eleven League Grant, and being described by metes and bounds as follows;

BEGINNING at the West corner of the said 109.52 acre tract, a point in bed of York Creek, whence a live oak 15" in diameter bears S. 71° 45' E. 14.2 vrs. and another live oak 15" in diameter bears N. 7° 30' W. 20-1/4 vrs;

THENCE with the N.W. line of said 109.52 acre tract, N. 45° 53' E. 442.8 vrs. to an iron pin for N. corner of this tract and West corner of the Carl W. Glenewinkel tract;

THENCE S. 44° 45' E. 395.07 vrs. to an iron pin for E. corner;

THENCE S. 45° 12' E. 190.9 vrs. to an iron pin in fence for corner;

THENCE with fence, S. 28° 27' E. 19.16 vrs. to an iron pin under fence for corner;

THENCE with the N. W. line of the Ida H. Soechting 50 acre tract S. 45° 12' W. 576.7 vrs. to a point in bed of York Creek for S. corner of this tract;

THENCE with meanders of York Creek: N. 61° 12' W. 95.3 vrs.; N. 12° 20' W. 52.6 vrs; N. 20° 58' W. 102 vrs; N. 18° 40' E. 62.1 vrs; N. 4° 50' W. 70.6 vrs; N. 21° 45' E. 175 vrs; N. 19° 00' W. 47.5 vrs; to the Place of Beginning;

The foregoing is the same tract of land which was set apart and allotted to Richard O. Glenewinkel in the certain deed of partition by and between Emma Glenewinkel et al, dated June 8, 1942, and recorded in Volume 125, pages 32-35 of the Deed Records of Hays County, Texas, reference to which is hereby made.

**TRACT (C):** The certain easement and right-of-way over and across a portion of the Ida H. Soechting 50 acre tract out of Subdivisions Nos. 148 and 149 of the A. M. Esnaurizar Eleven League Grant, in Hays and Comal Counties, Texas, which easement and right-of-way is established and described in the Agreement made and entered into by and between Ida H. Soechting, as party of the first part, and Richard O. Glenewinkel and wife, Hedwig Glenewinkel, as parties of the second part, dated April 28, 1950, and being filed for record in the office of the County Clerk of Hays County, Texas, in Volume 146, pages 411-413, reference to which instrument is hereby made for all purposes.

It is, however, agreed and understood that this conveyance is made subject to the grants of certain water rights affecting a portion of the land described under TRACT (B) above, as evidenced by the Agreement made and entered into by and between Richard O. Glenewinkel and wife, Hedwig Glenewinkel, as parties of the first part, and Ida H. Soechting, as party of the second part, and the Agreement made and entered into by and between Richard O. Glenewinkel and wife, Hedwig Glenewinkel as parties of the first part and Harry A. Glenewinkel and wife, Alma E. Glenewinkel, as parties of the second part, said Agreements being dated April 28, 1950, and being filed for record in the office of the County Clerk of Hays County, Texas, reference to which instruments is hereby made for all pertinent purposes.

It is expressly stipulated and agreed that an undivided one-eighth (1/8) interest of all oil, gas and other minerals in, on, under and that may be produced from the above described lands is not included in this conveyance. Such undivided one-eighth (1/8) interest of all such oil, gas and other minerals is hereby accepted and reserved from this conveyance, together with all incidental rights of ingress and egress for the purpose of finding, saving, treating, storing and removing any and all such minerals.

312 840

TO HAVE AND TO HOLD the above described premises together with all and singular the rights and appurtenances thereto in anywise belonging and all improvements thereon situated to DONALD W. TUFF and wife, GERMAINE TUFF, their heirs and assigns, forever; and,

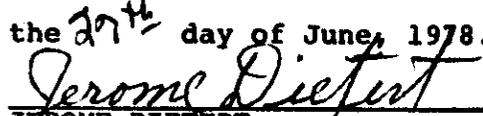
We do hereby bind ourselves, our heirs, executors and administrators, to WARRANT AND FOREVER DEFEND, all and singular, the said premises unto the said DONALD W. TUFF and wife, GERMAINE TUFF, their heirs and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, subject to EASEMENTS, RESTRICTIONS, and RESERVATIONS, if any of record, and all taxes not now due and payable.

Said above described indebtednesses are further secured by a Deed of Trust of even date herewith from DONALD W. TUFF and wife, GERMAINE TUFF, to JAMES M. CORNELIUS, Trustee for JEROME DIETERT and MARGARET DIETERT, and it is expressly agreed and stipulated that a vendor's lien and superior title is reserved against the above described property, premises and improvements until the above described notes and all interest thereon are fully paid according to their face and tenor, effect and reading, when this deed is to become absolute.

And, it is further agreed that the said DONALD W. TUFF and wife, GERMAINE TUFF, shall keep all taxes and assessments against said property paid as the same become due and payable, and shall permit no taxes to become delinquent against said property.

Failure on the part of the said DONALD W. TUFF and wife, GERMAINE TUFF, to keep and observe all terms, conditions and stipulations of this deed and of the above described notes may mature said notes at the option of the holders, and the liens reserved in this deed may become subject to foreclosure.

WITNESS OUR HANDS, this the 27<sup>th</sup> day of June, 1978.

  
JEROME DIETERT

  
MARGARET DIETERT

THE STATE OF TEXAS  
COUNTY OF COMAL

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312 841

BEFORE ME, the undersigned authority, on this day personally appeared MARGARET DIETERT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 27<sup>th</sup> day of June, 1978.

*John R. Powell*  
NOTARY PUBLIC, in and for  
Comal County, Texas



THE STATE OF TEXAS  
COUNTY OF COMAL

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S

VC: 312 : 812

BEFORE ME, the undersigned authority, on this day personally appeared JEROME DIETERT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the 27<sup>TH</sup> day of June, 1978.

*John R. Powell*  
NOTARY PUBLIC, in and for  
Comal County, Texas



STATE OF TEXAS }  
COUNTY OF HAYS }

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me; and was duly RECORDED, in the Volume and Page of the named RECORDS of Hays County, Texas, as stamped hereon by me, on

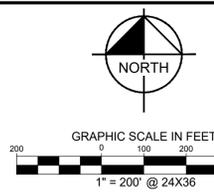


*Jul 14 1978*  
*Lyndee B. Clayton*  
COUNTY CLERK  
HAYS COUNTY, TEXAS

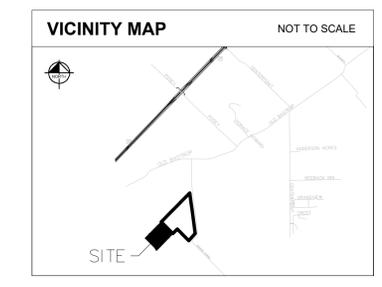
COUNTY CLERK

*Lyndee B. Clayton*

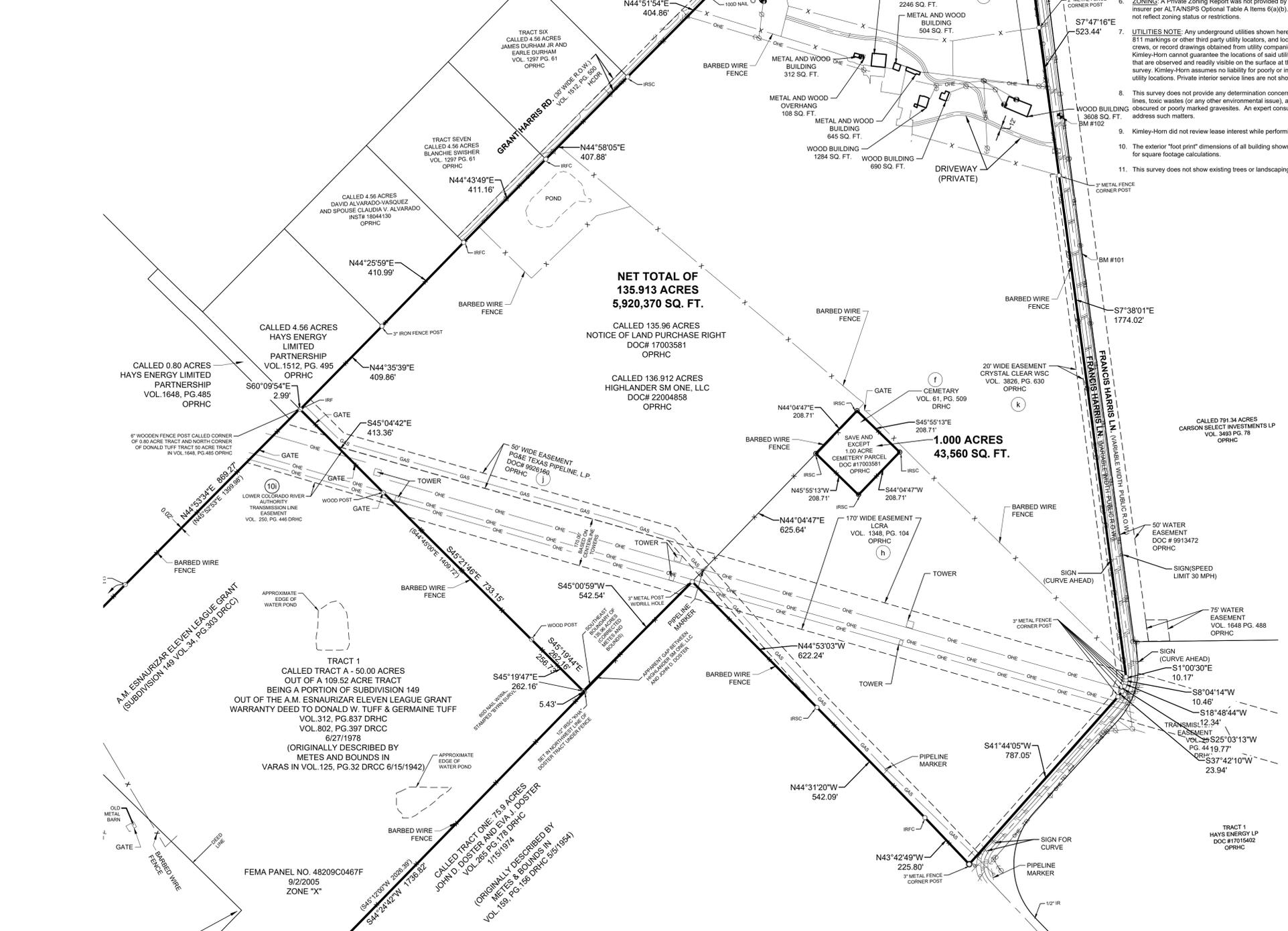
HAYS COUNTY, TEXAS  
1978 JUL 13 PM 4 42



LINE TYPE LEGEND	
(---)	BOUNDARY LINE
(---)	EASEMENT LINE
(---)	BUILDING LINE
(---)	GAS
(---)	UNDERGROUND GAS LINE
(---)	OHE
(---)	OVERHEAD UTILITY LINE
(---)	UGT
(---)	UNDERGROUND TELEPHONE LINE
(---)	FENCE
(---)	ASPHALT PAVEMENT



LEGEND	
(○)	CABLE TV HANDHOLE
(○)	TELEPHONE HANDHOLE
(○)	GUY ANCHOR
(○)	ELECTRIC METER
(○)	UTILITY POLE
(○)	A/C UNIT
(○)	AC UNIT
(○)	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY
(○)	DRHC RECORDS OF HAYS COUNTY
(○)	MAIL BOX
(○)	SANITARY SEWER CLEAN OUT
(○)	TREE
(○)	IRON ROD W/ "KHA" CAP SET
(○)	IRON ROD W/ CAP STAMPED "BYRN SURVEY" FOUND
(○)	IRON ROD FOUND
(○)	P.O.B. POINT OF BEGINNING
(○)	DRHC RECORDS OF HAYS COUNTY
(○)	DRHC RECORDS OF HAYS COUNTY



**GENERAL NOTES:**

- TITLE COMMITMENT NOTES:** This survey was performed utilizing that certain title report prepared by Fidelity National Title Insurance Company, G.F. No. 21-4431-C (Issue Date: October 27, 2021; Effective Date: October 7, 2021) and reflects only those easements and encumbrances of record mentioned therein. Kimley-Horn did not abstract the public records. The surveyed tract may be subject to additional government regulations and restrictions prior to further site development.
- FLOOD STATEMENT:** (USE FOR ZONE X UNSHADED) According to Community Panel No. 48209C0486F dated September 2, 2005 of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the subject tract is located within Zone "X" (un-shaded) which is defined by FEMA as "areas determined to be outside the 0.2% annual chance floodplain; commonly known as the 500-year floodplain. Zone "X" (un-shaded) is outside of any FEMA established flood hazard zone. All zone delineations shown hereon are approximate. This flood statement does not imply that the property and/or the structures thereon will be free from flooding or flood damage. On rare occasions, greater floods can and will occur and flood heights may be increased by man-made or natural causes. This flood statement shall not create any liability on the part of Kimley-Horn or the undersigned.
- GEODETTIC BASIS STATEMENT:** **HORIZONTAL CONTROL:** The bearings, distances, areas and coordinates shown hereon are the Texas State Plane Coordinate System, SOUTH CENTRAL Central Zone (FIPS 4204) (NAD'83), as determined by the Global Positioning System (GPS). All distances shown hereon are on the GRID. The unit of linear measurement is U.S. Survey Feet.
- ENCROACHMENTS:** Per ALTA/NSPS Survey Standards Item 5, Section C. Paragraph III: The term "Encroachment" implies a legal opinion. "Evidence of potentially encroaching structural appurtenances and projections observed in the process of conducting fieldwork" relative to title lines, setbacks, adjoining properties, and rights-of-way, will be shown, but the survey will make no judgment of "encroachment" or "non-encroachment".
- The subject tract has access to the public street right-of-ways of Francis Harris Lane.
- ZONING:** A Private Zoning Report was not provided by the owner or the insurer per ALTA/NSPS Optional Table A Items 6(a/b). This survey does not reflect zoning status or restrictions.
- UTILITIES NOTE:** Any underground utilities shown hereon are from Texas 811 markings or other third party utility locators, and located by survey crews, or record drawings obtained from utility companies representatives. Kimley-Horn cannot guarantee the locations of said utilities, except those that are observed and readily visible on the surface at the time of this survey. Kimley-Horn assumes no liability for poorly or improperly marked utility locations. Private interior service lines are not shown.
- This survey does not provide any determination concerning wetlands, fault lines, toxic wastes (or any other environmental issue), archeological sites or obscured or poorly marked grave sites. An expert consultant should address such matters.
- Kimley-Horn did not review lease interest while performing survey.
- The exterior "foot print" dimensions of all building shown hereon are used for square footage calculations.
- This survey does not show existing trees or landscaping.

**NOTES ADDRESSING SCHEDULE B EXCEPTIONS:**

- (Pursuant to Commitment for Title Insurance listed in General Note 1.)
- The following matters and all terms of the documents creating or offering evidence of the matters (We must insert matters or delete this exception):
    - All leases, grants, exceptions or reservations of coal, lignite, oil, gas and other minerals, together with all rights, privileges and immunities relating thereto, appearing in the Public Records whether listed in Schedule B or not. There may be leases, grants, exceptions or reservations of mineral interests that are not listed.
    - Any encroachment, encumbrance, violation, violation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land. The term "encroachment" includes encroachment of existing improvements located on the land onto adjoining land, and encroachments on the land of existing improvements located on adjoining land in the event of a conflict between this exception and Covered Risk 1 (C), this exception shall control. (Applies to Owner's Policy only)
    - Subject to terms in possession under unrecorded leases or rental agreements.
    - Any portion of the property lying within the boundary of any road or roadway.
    - Subject to any and all rights and/or privileges existing or which may later exist by virtue of that portion of the subject property being used as a cemetery including, but not limited to, the rights of sepulcher and interment and the rights of ingress and egress in and to said cemetery, as reserved in Deed recorded in Volume 61, Page 509, Deed Records of Hays County, Texas. (SUBJECT TO AS SHOWN)
    - Essement granted to Southwestern Bell Telephone Company, recorded in Volume 124, Page 302, Deed Records of Hays County, Texas, and being transferred to San Marcos Telephone Company by instrument recorded in Volume F, Page 509, Deed Records of Hays County, Texas. (DOES NOT AFFECT)
    - Essement awarded to Lower Colorado River Authority, by Judgment dated October 18, 1972, under Cause No. 9413, District Court Records, Hays County, Texas, as recorded in Volume R, Page 492, Civil Minute Records of District Court of Hays County, Texas, and amended by instrument recorded in Volume 1348, Page 104, Official Public Records of Hays County, Texas. (SUBJECT TO AS SHOWN)
    - Essements, terms, conditions, and stipulations in that certain Essement Agreement, as recorded in Document No. 9026150, of the Official Public Records of Hays County, Texas. (SUBJECT TO AS SHOWN)
    - Essement granted to Crystal Clear W.S.C., recorded in Volume 3826, Page 630, Official Public Records of Hays County, Texas. (SUBJECT TO AS SHOWN)
    - Terms, conditions, and stipulations in that certain Notice of Land Purchase Right, by and between Hays Energy, LLC, a Delaware limited liability company and successor by conversion to Hays Energy Limited Partnership, a Delaware limited partnership, and ENGIE Development, LLC, Delaware limited liability company, as recorded in Document No. 17003581, of the Official Public Records of Hays County, Texas.
    - Right of first refusal as set forth in Notice of Land Purchase Right, dated M. January 3, 2017, recorded in Document No. 17003581, of the Official Public Records of Hays County, Texas.
    - Subject property lies within the boundaries of York Creek Improvement District and may be subject to taxes or special assessments as provided by law.

**LEGAL DESCRIPTION:**

(Pursuant to Commitment for Title Insurance listed in General Note 1.)

DESCRIPTION OF 135.96 ACRES MORE OR LESS OF LAND AREA BEING A 136.96 ACRE TRACT LESS AND EXCEPT A ONE ACRE TRACT RESERVED FOR CEMETERY PURPOSES BEING A PORTION OF LOTS 148 AND 167 OF THE DIVISION OF THE AM ENSAURIZAR SURVEY HAYS COUNTY TEXAS AS SHOWN ON THE PLAT OF SUBDIVISION DATED MARCH 1948 AND RECORDED IN VOLUME 84 PAGE 471 OF THE HAYS COUNTY DEED RECORDS AND BEING ALL OF THAT TRACT DESCRIBED AS 136.96 ACRES IN A DEED JAMES W RAGSDALE TO HAYS ENERGY LIMITED PARTNERSHIP DATED AUGUST 9, 1999 AND RECORDED IN HAYS COUNTY DOCUMENT NO 9918986 OF THE HAYS COUNTY OFFICIAL PUBLIC RECORDS (BEING RESERVED IN PREVIOUS DEED ONE ACRE TRACT OF LAND FOR A CEMETERY PURPOSES)

**SURVEYORS CERTIFICATION:**

To: Highlander Real Estate Partners, LLC,  
(name of lender, if known);  
(name of insurer, if known);  
(names of others as negotiated with the client);

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2021 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1,3,4,8,9,13 and 16 of Table A thereof.

Field Work Date: 10/21/2021  
Survey Date: 11/09/2021  
Revised Date: 1/27/2025

*John G. Mosier*  
John Gregory Mosier  
Registered Professional Land Surveyor No. 6330  
Kimley-Horn and Associates, Inc.  
601 NW Loop 410, Suite 350  
San Antonio, Texas 78216  
Ph. 210-541-9166  
greg.mosier@kimley-horn.com



**METS AND BOUNDS:**

- BEING A 136.913 acre (5,963,930 square feet) tract of land less and except a one acre tract reserved for cemetery purposes for a total Net Acreage of 135.913 (5,920,370 square feet) of land situated in the A.M. Esnaurizar Survey aka A.M. Esnanrizar Survey, Abstract No. 6, Hays County, Texas, and being a all of that certain 136.96 acre tract (less and except one acre) in instrument to Hays Energy Limited Partnership in Document No. 9918986 of the Official Public Records of Hays County, Texas; and being more particularly described as follows:
- BEGINNING** at a mag nail found in concrete on the intersection of the westerly line of Francis Harris Lane (variable public with public right-of-way) and the southeasterly line of Grant Harris Road (30 feet wide private drive) marking the northeast corner of the said 136.96 acre tract and the east corner of that certain 1.00 acre tract described in Volume 4187 Page 894 of the Official Public Records of Hays County;
- THENCE** along the westerly right-of-way line of Francis Harris Lane the following ten (10) courses and distances:
- South 07°26'45" East, 744.57 feet to a 3-inch metal fence post found for corner;
  - South 07°41'05" East, 396.75 feet to a 2-inch metal fence post found for corner;
  - South 07°47'16" East, 523.44 feet to a 3-inch metal fence post found for corner;
  - South 07°38'01" East, 1774.02 feet to a 3-inch metal fence post found for corner;
  - South 01°00'30" East, 10.17 feet to a 3-inch metal fence post found for corner;
  - South 18°48'44" West, 12.34 feet to a 3-inch metal fence post found for corner;
  - South 25°03'13" West, 19.77 feet to a 3-inch metal fence post found for corner;
  - South 37°42'10" West, 23.94 feet to a 3-inch metal fence post found for corner;
  - South 41°44'05" West, 787.05 feet to a 3-inch metal fence post found for corner;
- THENCE**, departing the westerly right-of-way line of Francis Harris Lane and following along the northeasterly line of that certain 75.9 acre tract described as tract No. One (1) in instrument to John D. Doster and Eva J. Doster In Volume 265 Page 178 Deed Records Hays County the following three (3) courses and distances:
- North 43°42'49" West, 225.80 feet to a 1/2-inch capped iron rod found for corner;
  - North 44°51'14" West, 542.09 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set for corner;
  - North 44°53'03" West, 622.24 feet to a 3-inch metal post found for corner;
- THENCE**, South 45°00'59" West, 542.54 feet along the northeasterly line of said 75.9 acre tract to a 600 nail with washer stamped "BYRN SURVEY" found for corner;

**THENCE**, departing the aforesaid 75.9 acre tract and following along the northeasterly line of that certain 50.00 acre tract described in instrument to Donald Tuff In Volume 312 Page 837 in the Deed Records of Hays County the following three (3) courses and distances:

  - North 45°19'44" West, 262.16 feet to a wood post found for corner;
  - North 45°21'46" West, 733.15 feet to a wood post found for corner;
  - North 45°04'42" West, 413.36 feet to a 1/2-inch iron rod found for corner;

**THENCE**, North 44°33'39" East, 409.86 feet to a 3-inch iron fence post found for corner along the southeasterly line of that certain 4.56 acre tract described in instrument to Hays Energy Limited Partnership in Volume 1512, Page 495 of the Official Public Records of Hays County;

**THENCE**, North 44°25'59" East, 410.99 feet to a 1/2-inch capped iron rod found for corner along the southeasterly line of that certain 4.56 acre tract described in instrument to David Alvarado-Vasquez and spouse Claudia V. Alvarado Document No. 18044130 of the Official Public Records of Hays County;

**THENCE** along the southeasterly right-of-way line of the said Grant Harris Road the following seven (7) courses and distances:

  - North 44°43'49" East, 411.16 feet to a 1/2-inch capped iron rod found for corner;
  - North 44°58'05" East, 407.88 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set for corner;
  - North 44°51'54" East, 404.86 feet to a 1000 nail found for corner;
  - North 44°32'48" East, 405.35 feet to a 1/2-inch capped iron rod found for corner;
  - North 44°19'19" East, 410.59 feet to a 1/2-inch capped iron rod found for corner;
  - North 45°29'28" East, 450.37 feet to a 1/2-inch capped iron rod found for corner;

**THENCE**, North 45°29'21" East, 169.58 feet along the southeasterly right-of-way line of Grant Harris Road to the **POINT OF BEGINNING** and containing 136.912 acres in Hays County, Texas Less and Except that certain 1.00 acre tract reserved for cemetery purposes, and being more particularly described as follows:

**COMMENCING** at a 1/2-inch drill hole in a 3-inch metal fence post found at a three-way fence corner for an interior corner said 136.96 acre tract;

**THENCE**, North 44°04'47" East 625.64 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" to the **POINT OF BEGINNING** of the Save and Except described herein;

Thence the following three (3) courses and distances across the said 136.96 acre tract:

  - North 44°04'47" East, 208.71 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set for corner;
  - South 45°55'13" East, 208.71 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set for corner;
  - South 44°04'47" West, 208.71 feet to a 1/2-inch iron rod with a plastic cap stamped "KHA" set for corner;

**THENCE**, North 45°55'13" West 208.71 feet to the **POINT OF BEGINNING**, and containing 1.000 acre (43,560 square feet), for a total of 136.913 acres of land in Hays County, Texas.

The basis of bearing for this description is the Texas State Plane Coordinate System Grid South Central Zone (FIPS 4204) (NAD'83). All distances are on the Grid and shown in U.S. Survey Feet. This document was prepared in the office of Kimley-Horn and Associates, Inc. in San Antonio, Texas.

**ALTA/NSPS LAND TITLE SURVEY**  
135.913 ACRES  
A. M. ENSAURIZAR SURVEY AKA A. M. ENSANRIZAR SURVEY, ABSTRACT NO. 6  
HAYS COUNTY, TEXAS

**Kimley»Horn**

601 NW Loop 410, Suite 350 San Antonio, Texas 78216 FIRM # 10193973 Tel. No. (210) 541-9166 www.kimley-horn.com

No.	DATE	REVISION DESCRIPTION
1	1/27/25	updated survey name to include AKA

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 200'	MAV	JGM	1/27/2025	068727800	1 OF 1

**A METES AND BOUNDS  
DESCRIPTION OF A  
63.578 ACRE TRACT OF LAND**

**BEING** a 63.578 acre (2,769,448 square feet) tract of land situated in the A.M. Esnaurizar Survey, aka A. M. Esnanrizar Survey, Abstract No. 6, Hays County, Texas, and being a portion of the A.M. Esnaurizar Eleven League Grant Subdivision 149, plat of which is recorded in Volume 34, Page 303, Deed Records Comal County, and containing all of that certain tract 50.00 acre Tract A, and a portion of that certain 50.00 acre Tract B, both described in instrument to Donald W. Tuff and Germaine Tuff in Volume 312, Page 837, Deed Records Hays County, and Volume 802, Page 397, Deed Records Comal County; and being more particularly described as follows:

**BEGINNING** at a 6-inch wood fence post found on the southwesterly line of that certain 4.56 acre tract described in instrument to Hays Energy Limited Partnership in Volume 1512, Page 495, Official Public Records Hays County, marking the North corner of said 50.00 acre Tract A, and the East corner of that certain 0.80 acre tract described in instrument to Hays Energy Limited Partnership in Volume 1648, Page 485, Official Public Records Hays County; and marking the north corner of the herein described tract;

**THENCE**, South 60°09'54" East, 2.99 feet along the southwesterly line of said 4.56 acre tract to a 1/2-inch iron rod found marking the West corner of that certain 136.912 acre tract described in instrument to Highlander SM, LLC in Document No. 22004858, Official Public Records Hays County;

**THENCE**, along the common line of said 136.912 acre tract and said 50.00 acre Tract A, the following three (3) calls:

1. South 45°04'42" East, 413.36 feet to a wood fence post found for corner;
2. South 45°21'46" East, 733.15 feet to a wood fence post found for corner;
3. South 45°19'47" East, at 256.73 feet passing a 60d-nail with washer stamped "BYRN Survey" found marking the southwest corner of said 136.912 acre tract; continuing for a total distance of 262.16 feet to a 1/2-inch iron rod with cap stamped "KHA" set under a barbed wire fence on the northwesterly line of that certain 75.9 acre Tract One, described in instrument to John D. Doster and Eva J. Doster, recorded in Volume 265, Page 178, Deed Records Hays County, and marking the East corner of herein described tract;

**THENCE**, South 44°24'42" West, 1736.82 feet along the common line of said 50.00 acre Tract A and said 75.9 acre tract, to a found 1-inch iron pipe called for as the west corner of said 75.9 acre tract, and the northeast corner of that certain 46.8 acre Tract Three, recorded in said in Volume 265, Page 178;

**THENCE**, along the common line of said 46.8 acre tract and aforesaid 50.00 acre Tract A, the following two (2) calls:

1. South 44°40'50" West, 283.13 feet to a 6-inch wood corner post marking the South corner of herein described tract, and an interior North corner of said 46.8 acre tract;
2. North 29°48'52" West, 286.88 feet to an 8-inch wood corner post found marking the northern-most northwest corner of said 46.8 acre tract, and a southeast corner of aforesaid 50.00 acre Tract B;

**THENCE**, North 45°16'07" West, 1151.95 feet crossing said 50.00 acre Tract B to a 1/2-inch iron rod with cap stamped "KHA" set on the southeasterly line of that certain called 49.68 acre tract described in instrument to Connie D. Martin in Document No. 80031113, Official Public Records Hays County, and marking the West corner of the herein described tract; said set rod bears South 44°58'19" West, 687.46 feet to a 1/2-inch iron rod with illegible cap found at the called North corner of Subdivision 124 of Esnaurizar Grant, and marking:

1. the South corner of said 49.68 acre tract;
2. the East corner of that certain tract 3.02 acre tract described in instrument to Connie Martin in Document No. 2008-80031897, Official Public Records Hays County, and Document No. 20080604468 Official Public Records Comal County;
3. the North corner of that certain 2.54 acre tract out of a 3.74 acre tract, described in instrument to Donald and Germaine Tuff in Volume 928, Page 471, Deed Records Comal County; said found rod bears: South 67°37'49" East, 36.85 feet to a found 25" fallen live oak (called 15" live oak in Volume 312, Page 831, Deed Records Hays County - shot in center of root ball), and North 11°50'10" West, 56.35 feet to a found 22" fallen live oak (called 15" live oak in Volume 312, Page 831, Deed Records Hays County - shot in center of root ball);

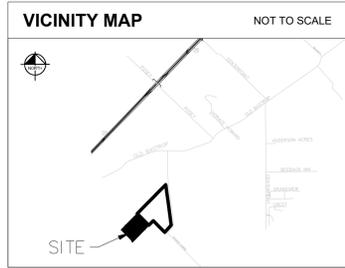
THENCE, along common line of said 49.68 acre tract, and of said 50.00 acre Tract A and said 50.00 acre Tract B, the following three (2) calls:

1. North 44°58'19" East, 1,073.33 feet to a 1/2-inch iron rod with cap stamped "ASH 5687" found for corner;
2. North 44°53'34" East, 869.27 feet to the **POINT OF BEGINNING**, and containing 63.578 acres of land in Hays County, Texas. The basis of bearing for this description is the Texas State Plane Coordinate System Grid South Central Zone (FIPS 4204) (NADd'83). All distances are on the Grid and shown in U.S. Survey Feet. This description was generated on 8/28/2024 at 2:31 pm, based on geometry in the drawing file k:\sna\_survey\highlander real estate partners\068727800-Francis Harris\Dwg\Francis Harris Base.dwg, in the office of Kimley-Horn and Associates in San Antonio, Texas.

*John G. Mosier 1-16-2025*

John G. Mosier  
Registered Professional Land Surveyor No. 6330  
Kimley-Horn and Associates, Inc.  
601 NW Loop 410, Suite 350  
San Antonio, Texas 78216  
Ph. 210-541-9166  
greg.mosier@kimley-horn.com





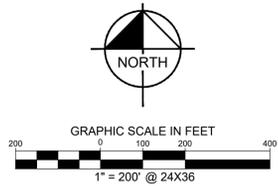
**TITLE COMMITMENT LEGAL DESCRIPTION:**

TRACT 1: BEING 50 ACRES OF LAND, MORE OR LESS, IN THE A. M. ESNANRIZAR ELEVEN LEAGUE GRANT, SITUATED IN HAYS COUNTY, TEXAS AND COMAL COUNTY, TEXAS, BEING THAT SAME TRACT CALLED TRACT A CONVEYED IN VOLUME 312, PAGE 837, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND VOLUME 802, PAGE 397, OF THE DEED RECORDS OF COMAL COUNTY, TEXAS, AND AS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "A" ATTACHED HERETO.

TRACT 2: BEING 50 ACRES OF LAND, MORE OR LESS, IN THE A. M. ESNANRIZAR ELEVEN LEAGUE GRANT, SITUATED IN HAYS COUNTY, TEXAS AND COMAL COUNTY, TEXAS, BEING THAT SAME TRACT CALLED TRACT B CONVEYED IN VOLUME 312, PAGE 837, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS, AND VOLUME 802, PAGE 397, OF THE DEED RECORDS OF COMAL COUNTY, TEXAS, AND AS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "B" ATTACHED HERETO.

TRACT 3: BEING 1.2 ACRES OF LAND, MORE OR LESS, IN THE A. M. ESNANRIZAR SURVEY, SITUATED IN COMAL COUNTY, TEXAS, BEING THAT SAME TRACT CONVEYED IN VOLUME 496, PAGE 300, OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS, AND VOLUME 386, PAGE 188, OF THE DEED RECORDS OF COMAL COUNTY, TEXAS, AND AS MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS IN EXHIBIT "C" ATTACHED HERETO.

TRACT 4: BEING 2.54 ACRES OF LAND, MORE OR LESS, IN THE A. M. ESNANRIZAR SURVEY, SITUATED IN COMAL COUNTY, TEXAS, BEING THAT SAME TRACT CONVEYED IN VOLUME 928, PAGE 471, OF THE DEED RECORDS OF COMAL COUNTY, TEXAS.



**LINE TYPE LEGEND**

---	UTILITY POLE
---	EASEMENT LINE
---	BUILDING LINE
---	IRON ROD FENCE
---	WATER LINE
---	SANITARY SEWER LINE
---	STORM DRAIN LINE
---	IRON ROD W/ CAP STAMPED
---	"BYRN SURVEY" FOUND
---	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY
---	DRHC DEED RECORDS OF HAYS COUNTY
---	OFFICIAL PUBLIC RECORDS OF COMAL COUNTY
---	DRCC DEED RECORDS OF COMAL COUNTY
---	PLAT RECORDS OF COMAL COUNTY
---	DEED CALL

**LEGEND**

---	GUY ANCHOR
---	UTILITY POLE
---	1/2" IRON ROD W/ "KHA" CAP SET
---	IRON ROD W/ CAP STAMPED
---	WATER LINE
---	SANITARY SEWER LINE
---	STORM DRAIN LINE
---	IRON ROD W/ CAP STAMPED
---	"BYRN SURVEY" FOUND
---	OFFICIAL PUBLIC RECORDS OF HAYS COUNTY
---	DRHC DEED RECORDS OF HAYS COUNTY
---	OFFICIAL PUBLIC RECORDS OF COMAL COUNTY
---	DRCC DEED RECORDS OF COMAL COUNTY
---	PLAT RECORDS OF COMAL COUNTY
---	DEED CALL

**A METES AND BOUNDS DESCRIPTION OF A 63.578 ACRE TRACT OF LAND**

BEING A 63.578 ACRE (2,769,448 SQUARE FEET) TRACT OF LAND SITUATED IN THE A. M. ESNANRIZAR SURVEY AKA A. M. ESNANRIZAR, ABSTRACT NO. 6, HAYS COUNTY, TEXAS, AND BEING A PORTION OF THE A. M. ESNANRIZAR ELEVEN LEAGUE GRANT SUBDIVISION 149, PLAT OF WHICH IS RECORDED IN VOLUME 34, PAGE 303, DEED RECORDS COMAL COUNTY, AND CONTAINING ALL OF THAT CERTAIN TRACT A, AND A PORTION OF THAT CERTAIN 50.00 ACRE TRACT B, BOTH DESCRIBED IN INSTRUMENT TO DONALD W. TUFF AND GERMAINE TUFF IN VOLUME 312, PAGE 837, DEED RECORDS HAYS COUNTY, AND VOLUME 802, PAGE 397, DEED RECORDS COMAL COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**BEGINNING** AT A 6-INCH WOOD FENCE POST FOUND ON THE SOUTHWESTERLY LINE OF THAT CERTAIN 4.56 ACRE TRACT DESCRIBED IN INSTRUMENT TO HAYS ENERGY LIMITED PARTNERSHIP IN VOLUME 1512, PAGE 495, OFFICIAL PUBLIC RECORDS HAYS COUNTY, MARKING THE NORTH CORNER OF SAID 50.00 ACRE TRACT A, AND THE EAST CORNER OF THAT CERTAIN 0.80 ACRE TRACT DESCRIBED IN INSTRUMENT TO HAYS ENERGY LIMITED PARTNERSHIP IN VOLUME 1648, PAGE 485, OFFICIAL PUBLIC RECORDS HAYS COUNTY, AND MARKING THE NORTH CORNER OF THE HEREIN DESCRIBED TRACT;

**THENCE** SOUTH 60°09'54" EAST, 2.99 FEET ALONG THE SOUTHWESTERLY LINE OF SAID 4.56 ACRE TRACT TO A 1/2-INCH IRON ROD FOUND MARKING THE WEST CORNER OF THAT CERTAIN 136.912 ACRE TRACT DESCRIBED IN INSTRUMENT TO HIGHLANDER SM, LLC IN DOCUMENT NO. 22004858, OFFICIAL PUBLIC RECORDS HAYS COUNTY;

**THENCE** ALONG THE COMMON LINE OF SAID 136.912 ACRE TRACT AND SAID 50.00 ACRE TRACT A, THE FOLLOWING THREE (3) CALLS:

1. SOUTH 45°04'42" EAST, 413.36 FEET TO A WOOD FENCE POST FOUND FOR CORNER;
2. SOUTH 45°14'01" EAST, 733.15 FEET TO A WOOD FENCE POST FOUND FOR CORNER;
3. SOUTH 45°19'47" EAST, AT 256.73 FEET PASSING A 600-NAIL W/ WASHES STAMPED "BYRN SURVEY" FOUND MARKING THE SOUTHWEST CORNER OF SAID 136.912 ACRE TRACT; CONTINUING FOR A TOTAL DISTANCE OF 262.16 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "KHA" SET ON THE NORTHWESTERLY LINE OF THAT CERTAIN 75.9 ACRE TRACT ONE, DESCRIBED IN INSTRUMENT TO JOHN D. DOSTER AND EVA J. DOSTER, RECORDED IN VOLUME 265, PAGE 178, DEED RECORDS HAYS COUNTY, AND MARKING THE EAST CORNER OF HEREIN DESCRIBED TRACT;

**THENCE** SOUTH 44°24'42" WEST, 1736.82 FEET ALONG THE COMMON LINE OF SAID 50.00 ACRE TRACT A AND SAID 75.9 ACRE TRACT, TO A FOUND 1-INCH IRON PIPE CALLED FOR AS THE WEST CORNER OF SAID 75.9 ACRE TRACT, AND THE NORTHEAST CORNER OF THAT CERTAIN 46.8 ACRE TRACT THREE, RECORDED IN SAID IN VOLUME 265, PAGE 178;

**THENCE** ALONG THE COMMON LINE OF SAID 46.8 ACRE TRACT AND AFORESAID 50.00 ACRE TRACT A, THE FOLLOWING TWO (2) CALLS:

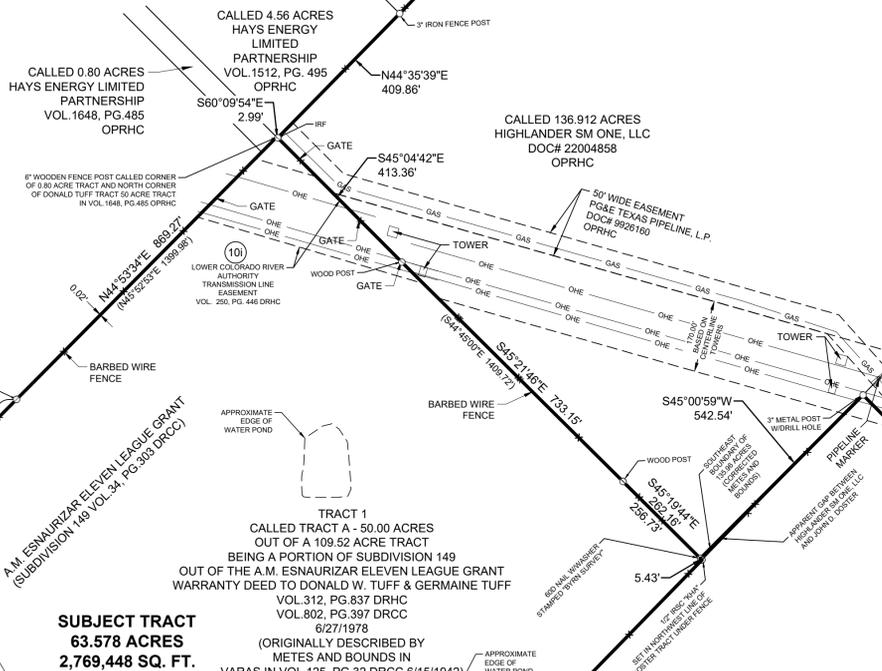
1. SOUTH 44°40'50" WEST, 283.13 FEET TO A 6-INCH WOOD CORNER POST MARKING THE SOUTH CORNER OF HEREIN DESCRIBED TRACT, AND AN INTERIOR NORTH CORNER OF SAID 46.8 ACRE TRACT;
2. NORTH 29°48'52" WEST, 286.88 FEET TO A 8-INCH WOOD CORNER POST MARKING THE NORTHERN-MOST NORTHWEST CORNER OF SAID 46.8 ACRE TRACT, AND A SOUTHEAST CORNER OF AFORESAID 50.00 ACRE TRACT B;

**THENCE** NORTH 45°16'07" WEST, 1151.95 FEET CROSSING SAID 50.00 ACRE TRACT B TO A 1/2-INCH IRON ROD WITH CAP STAMPED "KHA" SET ON THE SOUTHEASTERLY LINE OF THAT CERTAIN CALLED 46.8 ACRE TRACT, DESCRIBED IN INSTRUMENT TO CONNIE D. MARTIN IN DOCUMENT NO. 80031113, OFFICIAL PUBLIC RECORDS HAYS COUNTY, AND MARKING THE WEST CORNER OF THE HEREIN DESCRIBED TRACT; SAID SET ROD BEARS SOUTH 44°58'19" WEST, 687.46 FEET TO A 1/2-INCH IRON ROD WITH ILLIGIBLE CAP FOUND AT THE CALLED NORTH CORNER OF SUBDIVISION 124 OF ESNANRIZAR GRANT, AND MARKING:

1. THE SOUTH CORNER OF SAID 49.68 ACRE TRACT;
2. THE EAST CORNER OF THAT CERTAIN TRACT 3.02 ACRE TRACT DESCRIBED IN INSTRUMENT TO CONNIE MARTIN IN DOCUMENT NO. 2008-80031897, OFFICIAL PUBLIC RECORDS HAYS COUNTY, AND DOCUMENT NO. 20089004488 OFFICIAL PUBLIC RECORDS COMAL COUNTY;
3. THE NORTH CORNER OF THAT CERTAIN 2.54 ACRE TRACT OUT OF A 3.74 ACRE TRACT, DESCRIBED IN INSTRUMENT TO DONALD AND GERMAINE TUFF IN VOLUME 928, PAGE 471, DEED RECORDS COMAL COUNTY; SAID FOUND ROD BEARS: SOUTH 67°37'49" EAST, 36.85 FEET TO A FOUND 2" FALLEN LIVE OAK, CALLED 15" LIVE OAK IN VOLUME 312, PAGE 831, DEED RECORDS HAYS COUNTY (SHOT IN CENTER OF ROOT BALL), AND NORTH 11°50'10" WEST, 56.35 FEET TO A FOUND 22" FALLEN LIVE OAK, CALLED 15" LIVE OAK IN VOLUME 312, PAGE 831, DEED RECORDS HAYS COUNTY (SHOT IN CENTER OF ROOT BALL);

**THENCE**, ALONG COMMON LINE OF SAID 49.68 ACRE TRACT, AND OF SAID 50.00 ACRE TRACT A AND SAID 50.00 ACRE TRACT B, THE FOLLOWING THREE (3) CALLS:

1. NORTH 44°58'19" EAST, 1,073.33 FEET TO A 1/2-INCH IRON ROD WITH CAP STAMPED "ASH 5687" FOUND FOR CORNER;
2. NORTH 44°53'34" EAST, 869.27 FEET TO THE POINT OF BEGINNING, AND CONTAINING 63.578 ACRES OF LAND IN HAYS COUNTY, TEXAS, THE BASIS OF BEARING FOR THIS DESCRIPTION IS THE TEXAS STATE PLANE COORDINATE SYSTEM GRID SOUTH CENTRAL ZONE (FIPS 4204) (NAD83). ALL DISTANCES ARE ON THE GRID AND SHOWN IN U.S. SURVEY FEET. THIS DESCRIPTION WAS GENERATED ON 8/26/2024 AT 2:31 PM, BASED ON GEOMETRY IN THE DRAWING FILE K:\SNA SURVEY\HIGHLANDER REAL ESTATE PARTNERS\0682780\FRANCIS HARRIS\DWG\FRANCIS HARRIS BASE DWG, IN THE OFFICE OF KIMLEY-HORN AND ASSOCIATES IN SAN ANTONIO, TEXAS.



**SUBJECT TRACT  
63.578 ACRES  
2,769,448 SQ. FT.**

**NOT PART OF THIS SURVEY  
39.814 ACRES  
1,734,298 SQ. FT.**

LINE TABLE		
NO.	BEARING	LENGTH
L1	S67°37'49"E	36.85'
L2	N11°50'10"W	56.35'

**SURVEYORS CERTIFICATION:**

TO: HIGHLANDER REAL ESTATE PARTNERS, LLC, DONALD W. TUFF AND WIFE, GERMAINE TUFF; FIRST AMERICAN TITLE GUARANTY COMPANY;

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE IN ACCORDANCE WITH THE 2021 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1, 3, 4, 8, 9, 13 AND 16 OF TABLE A THEREOF.

FIELD WORK DATE: AUGUST 15, 2024  
SURVEY DATE: SEPTEMBER 12, 2024  
REVISED DATE: OCTOBER 3, 2024  
REVISED DATE: OCTOBER 4, 2024  
REVISED DATE: JANUARY 16, 2025

*John G. Mosier*  
JOHN GREGORY MOSIER  
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 6330  
KIMLEY-HORN AND ASSOCIATES, INC.  
10101 REUNION PLACE, SUITE 400  
SAN ANTONIO, TEXAS 78216  
PH. 210-541-9166  
GREG.MOSIER@KIMLEY-HORN.COM



No.	DATE	REVISION DESCRIPTION
3	1/16/25	ESNAURIZAR AKA ESNANRIZAR
2	10/4/24	CORRECTED BEARING CALL
1	10/3/24	UPDATE 10K REFERENCE

**ALTA/NSPS LAND TITLE SURVEY  
63.578 ACRES**

A. M. ESNANRIZAR SURVEY AKA A. M. ESNANRIZAR SURVEY, ABSTRACT NO. 6 HAYS COUNTY, TEXAS

**Kimley»Horn**

10101 Reunion Place, Suite 400  
San Antonio, Texas 78216  
FIRM # 10193973  
Tel. No. (210) 541-9166  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 200'	MAV	JGM	11/10/2021	06827800	1 OF 1

**EXCEPTIONS FROM COVERAGE**

IN ADDITION TO THE EXCLUSIONS AND CONDITIONS AND STIPULATIONS, YOUR POLICY WILL NOT COVER LOSS, COSTS, ATTORNEY'S FEES, AND EXPENSES RESULTING FROM:

1. THE FOLLOWING RESTRICTIVE COVENANTS OF RECORD ITEMIZED BELOW (WE MUST EITHER INSERT SPECIFIC RECORDING DATA OR DELETE THIS EXCEPTION):  
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**GENERAL NOTES:**

1. TITLE COMMITMENT NOTES: THIS SURVEY WAS PERFORMED UTILIZING THAT CERTAIN TITLE REPORT PREPARED BY FIRST AMERICAN TITLE GUARANTY COMPANY, G.F. NO. 24-1545-C, (ISSUE DATE: JUNE 3, 2024, EFFECTIVE DATE: MAY 28, 2024) AND REFLECTS ONLY THOSE EASEMENTS AND ENCUMBRANCES OF RECORD MENTIONED THEREIN. KIMLEY-HORN DID NOT ABSTRACT THE PUBLIC RECORDS. THE SURVEYED TRACT MAY BE SUBJECT TO ADDITIONAL GOVERNMENT REGULATIONS AND RESTRICTIONS PRIOR TO FURTHER SITE DEVELOPMENT.
2. FLOOD STATEMENT: ACCORDING TO COMMUNITY PANEL NO. 48209C0467F DATED SEPTEMBER 2, 2005 AND 48209C0470F DATED SEPTEMBER 2, 2005 OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FLOOD INSURANCE RATE MAP (FIRM), THE SUBJECT TRACT IS LOCATED WITHIN ZONE "X" (UN-SHADED) WHICH IS DEFINED BY FEMA AS "AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN," COMMONLY KNOWN AS THE 500-YEAR FLOODPLAIN. ZONE "X" (UN-SHADED) IS OUTSIDE OF ANY FEMA ESTABLISHED FLOOD HAZARD ZONE. ALL ZONE DELINEATIONS SHOWN HEREON ARE APPROXIMATE. THIS FLOOD STATEMENT DOES NOT IMPLY THAT THE PROPERTY AND/OR THE STRUCTURES THEREON WILL BE FREE FROM FLOODING OR FLOOD DAMAGE. ON RARE OCCASIONS GREATER FLOODS CAN AND WILL OCCUR AND FLOOD HEIGHTS MAY BE INCREASED BY MAN-MADE OR NATURAL CAUSES. THIS FLOOD STATEMENT SHALL NOT CREATE ANY LIABILITY ON THE PART OF KIMLEY-HORN OR THE UNDERSIGNED.
3. GEODETIC BASIS STATEMENT:  
HORIZONTAL CONTROL: THE BEARINGS, DISTANCES, AREAS AND COORDINATES SHOWN HEREON ARE THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE (FIPS 4204) (NAD83), AS DETERMINED BY THE GLOBAL POSITIONING SYSTEM (GPS). ALL DISTANCES SHOWN HEREON ARE ON THE GRID. THE UNIT OF LINEAR MEASUREMENT IS U.S. SURVEY FEET.
4. ENCROACHMENTS: PER ALTA/NSPS SURVEY STANDARDS ITEM 5, SECTION C, PARAGRAPH III: THE TERM "ENCROACHMENT" IMPLIES A LEGAL OPINION, "EVIDENCE OF POTENTIALLY ENCROACHING STRUCTURAL APPURTENANCES AND PROJECTIONS OBSERVED IN THE PROCESS OF CONDUCTION FIELDWORK" RELATIVE TO TITLE LINES, SETBACKS, ADJOINING PROPERTIES, AND RIGHTS-OF-WAYS, WILL BE SHOWN, BUT THE SURVEY WILL MAKE NO JUDGMENT OF "ENCROACHMENT" OR "NON-ENCROACHMENT."
5. ZONING: A PRIVATE ZONING REPORT WAS NOT PROVIDED BY THE OWNER OR THE INSURER PER ALTA/NSPS OPTIONAL TABLE A ITEMS (A)(B). THIS SURVEY DOES NOT REFLECT ZONING STATUS OR RESTRICTIONS.
6. UTILITIES NOTE: ANY UNDERGROUND UTILITIES SHOWN HEREON ARE FROM TEXAS 811 MARKINGS OR OTHER THIRD PARTY UTILITY LOCATORS, AND LOCATED BY SURVEY CREWS, OR RECORD DRAWINGS OBTAINED FROM UTILITY COMPANIES REPRESENTATIVES. KIMLEY-HORN CANNOT GUARANTEE THE LOCATIONS OF SAID UTILITIES EXCEPT THOSE THAT ARE OBSERVED AND READILY VISIBLE ON THE SURFACE AT THE TIME OF THIS SURVEY. KIMLEY-HORN ASSUMES NO LIABILITY FOR POORLY OR IMPROPERLY MARKED UTILITY LOCATIONS. PRIVATE INTERIOR SERVICE LINES ARE NOT SHOWN.
7. THIS SURVEY DOES NOT PROVIDE ANY DETERMINATION CONCERNING WETLANDS, FAULT LINES, TOXIC WASTES (OR ANY OTHER ENVIRONMENTAL ISSUE), ARCHEOLOGICAL SITES OR OBSERVED OR POORLY MARKED GRAVESITES. AN EXPERT CONSULTANT SHOULD ADDRESS SUCH MATTERS.
8. KIMLEY-HORN DID NOT REVIEW LEASE INTEREST WHILE PERFORMING SURVEY.
9. THE EXTERIOR "FOOT PRINT" DIMENSIONS OF ALL BUILDING SHOWN HEREON ARE USED FOR SQUARE FOOTAGE CALCULATIONS.