

# ANNEXATION APPLICATION

Updated: March, 2023



## CONTACT INFORMATION

Applicant's Name	Michael J. Whellan	Property Owner	Donald and Germaine Tuff
Company	Armbrust & Brown, PLLC	Company	(Attorney: Kristen Quinney Porter)
Applicant's Mailing Address	100 Congress Ave., #1300 Austin, TX 78701	Owner's Mailing Address	P.O. Box 312643, New Braunfels, Texas 78131
Applicant's Phone #	[REDACTED]	Owner's Phone #	[REDACTED]
Applicant's Email	[REDACTED]	Owner's Email	[REDACTED]

## PROPERTY INFORMATION

Is the property adjacent to city limits: ☒ YES ☐ NO

Is the property proposing to connect to City utilities: ☐ YES, WATER ☒ YES, WASTE WATER ☐ NO

Is the property subject to an approved development or other agreement: ☐ YES ☒ NO

Proposed Use: Data Center Proposed Zoning: LI

Reason for Annexation / Other Considerations: To allow for orderly development as part of assemblage that includes a tract already annexed into the City of San Marcos (900 Francis Harris Ln.).

## AUTHORIZATION

*By submitting this digital application, 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 \$1,800      Technology Fee \$15      TOTAL COST \$1,815

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

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

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: 12/10/24  
Printed Name, Title: Germaine Tuff

Signature of Agent: Michael J. Whellan Date: 12/11/24  
Printed Name, Title: Michael J. Whellan, Agent

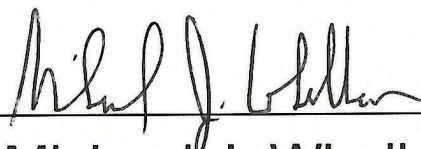
Form Updated October, 2019

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: 12/10/24  
Printed Name, Title: Donald Tuff

Signature of Agent:  Date: 12/11/24  
Printed Name, Title: Michael J. Whellan, Agent

Form Updated October, 2019

# ARMBRUST & BROWN, PLLC

ATTORNEYS AND COUNSELORS

100 CONGRESS AVENUE, SUITE 1300  
AUSTIN, TEXAS 78701-2744  
512-435-2300

FACSIMILE 512-435-2360

January 17, 2025

Amanda Hernandez, Director of Planning & Development Services  
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 Ms. Hernandez,

On behalf of Highlander SM One, LLC and Donald and Germaine Tuff (collectively, the “Owners”), I am submitting the attached application packages to 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. This letter replaces the letter dated December 11, 2024.

At this time, we believe the Property will need the following approvals to provide for the ability to develop a data center use on the Property:

- **Annexation.** The Owners request that the City 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 that the City amend the Preferred Scenario Map to designate the Property for Commercial/Employment Low.
- **Zoning.** The Owners request that the City designate the Property for Light Industrial (“LI”) zoning.

I have summarized these requests in Figure 1 below.

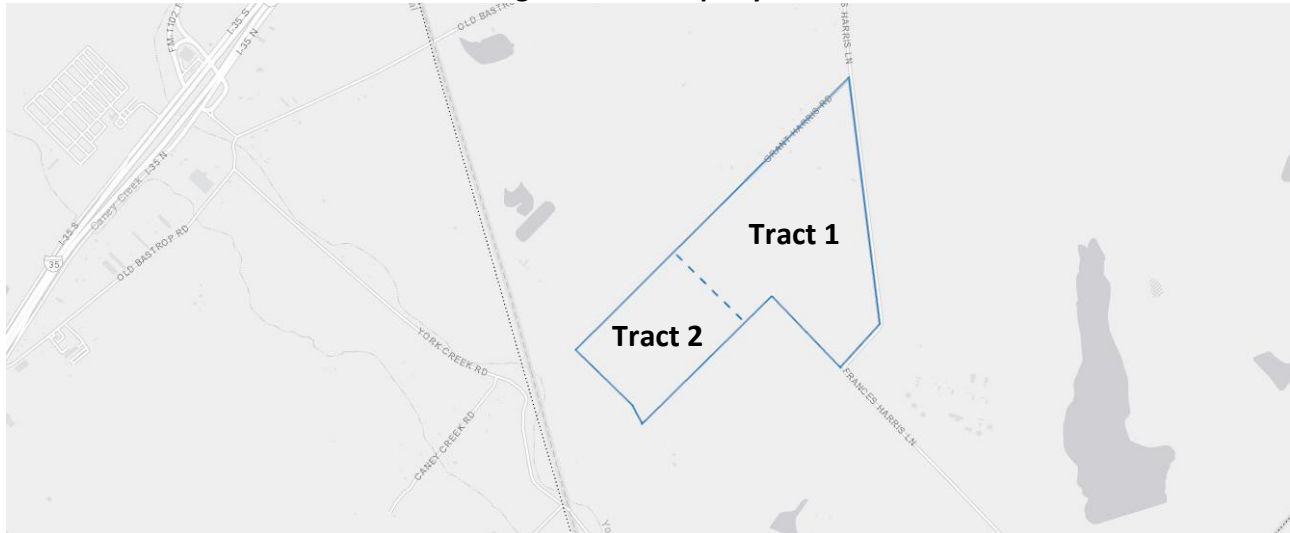
**Figure 1. Application Package Summary**

	Tract 1	Tract 2
Size	135.91 acres	63.58 acres
Jurisdiction		
Current Jurisdiction	City of San Marcos	Extraterritorial Jurisdiction
Requested Jurisdiction	City of San Marcos	City of San Marcos
Zoning		
Current Zoning	Character District 2.5	Unzoned
Requested Jurisdiction	Light Industrial	Light Industrial

## 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.

**Figure 2. The Property**



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.

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 Background

In 2022, Highlander SM One, LLC requested that the City annex Tract 1 and zone it to allow for development of approximately 470 single-family lots. Council later voted to annex Tract 1 and designate it for the corresponding CD-2.5 single-family zoning district. However, this project failed to proceed.

Since then, the Owners have collaborated on a new vision for the broader Property: assembling Tracts 1 and 2 together and developing a data center – a use much more consistent with the adjacent power plant

and with a lower overall traffic footprint for Francis Harris Lane. (Example images of data center developments are attached to this letter. These images are intended to provide a general reference point for this type of use and are not renderings for this particular Property.)

To accomplish this, the Owners are submitting the attached applications for annexation, zoning, and a Preferred Scenario Map amendment. In accordance with San Marcos policy, I met with City staff for two pre-development meetings (on Wednesday, October 16, 2024 and Monday, November 4, 2024), to review our forthcoming applications and seek initial feedback. During those meetings, staff provided information on City policies and procedures and specified the zoning designation required to seek a data center use (Light Industrial).

### **Utilities**

The project intends to use the Crystal Clear Special Utility District (“CCSUD”) for water service, the City for wastewater 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.

### **Environmental**

The Owners are not aware of any floodplain or other environmentally sensitive features impacting the Property at this time, 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.

### **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:

- **A data center use will produce new tax revenues with limited need for City services.** Vision SMTX 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. This is particularly important at this location, given that it is located on the edge of the city limits in an area that is mostly undeveloped today. 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 as described in greater detail in the *Fiscal Analysis* section below. In contrast, the previous proposal for this Property – a 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.
- **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 will thus generate greater congestion and ‘wear and tear’ for the City to manage. This is discussed in greater detail in the *Fiscal Analysis* section below.

- **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.

Of those areas, Vision SMTX notes that large portions of the northwest are environmentally sensitive, thus prioritizing development in *other* areas. Vision SMTX also prioritizes developing within Hays County, noting that “Most of the city and its future growth potential is within Hays County, which is more convenient for service provision since San Marcos is the Hays County seat” and that “New development in other counties generates greater coordination needs and added service burdens.” Finally, data centers often benefit from proximity to other uses with robust electrical infrastructure, like power plants.

In this case, the Property is located in the southernmost part of San Marcos (*not* in the more sensitive northwest), in Hays County, and is directly adjacent to an existing power plant – all of which indicates that this is a desirable location for this particular use.

- **This proposal is fully consistent with City precedent in this area and will complement the existing adjacent power plant use.** The City has already designated the adjacent power plant use for the Commercial/Employment Low Place Type and for Heavy Industrial zoning. The Owners’ request is fully consistent with this precedent. We are requesting the same Preferred Scenario designation as the power plant (Commercial/Employment Low) and a less intense zoning designation (Light Industrial). Additionally, a data center use is fully consistent with and complementary to the adjacent power plant use – and can help serve as a ‘transition area’ buffer between the more intense power plant and lower intensity ETJ areas.

We believe that this information demonstrates that a data center use is valuable generally – and that, from a planning perspective, this particular location is both appropriate and desirable for a data center.

### **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 that neither attract outside visitors nor require trucking. 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” and that “[u]nlike industrial facilities, there is no fleet of trucks going in and out, which further minimizes traffic congestion.”

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.”

## Conclusion

We believe that this revised cover letter demonstrates that our annexation, Preferred Scenario Map amendment, and zoning requests, to allow for the development of a data center use on the Property, are reasonable, appropriate, and consistent with the City’s policies and with good planning principles.

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

Respectfully,



Michael J. Whellan

---

<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).

### Attachment A: Example Images

*(These images are intended to provide a general reference point for the data center use and are **not** renderings for this particular Property.)*



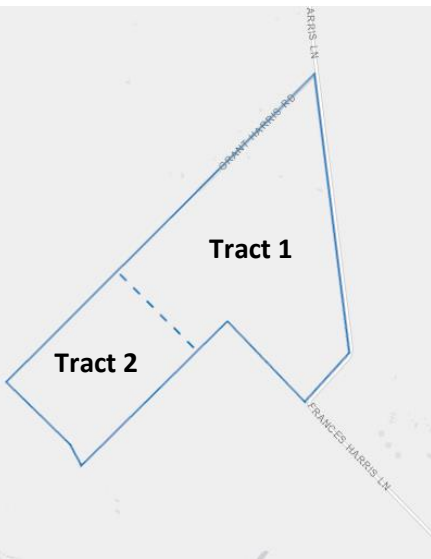


## Francis Harris Lane Data Center – Case Summary

- The applicant is seeking to develop a data center at 900 Francis Harris Ln. (also known as 904 Francis Harris Lane) – a site formerly planned for a large single-family subdivision.
  - The applicant has submitted annexation, Preferred Scenario Map amendment, and zoning cases related to a 200-acre assemblage at the edge of San Marcos (Figure 1).
  - In 2022, the owner of a portion of the site (Tract 1) requested the city annex Tract 1 for a 470-unit residential subdivision – though that project ultimately did not proceed.

**Figure 1. The Property**

	Tract 1	Tract 2
Size	135.91 acres	63.58 acres
Cases		
Annexation	<i>(Already Annexed)</i>	Requested
Place Type		
Current	Conservation/Cluster	Conservation/Cluster
Request	Commercial/ Employment Low	Commercial/ Employment Low
Zoning		
Current	Character District 2.5	Unzoned
Request	Light Industrial	Light Industrial



- Today, the owners have re-envisioned the site for a data center – a use that meaningfully improves over the previous residential proposal and better meets city goals and good planning principles.
  - The site is located on the edge of the city limits, currently has only one main connection to the rest of the city (Francis Harris Lane), and is adjacent to an existing power plant.
  - A data center offers new tax revenue while generating *lower* overall demand for city services and *lower* traffic than a single-family project, and it is more compatible with the adjacent power plant.

**Figure 2. Fiscal Impact Summary**

Area	Data Center	Large Single-Family Subdivision
New Tax Revenues	Meaningful New Revenues	Meaningful New Revenues
Demand on City Service	Limited Overall Demand	Meaningful New Demand
<i>Police, Fire, EMS</i>	<i>Limited Demand</i>	<i>Meaningful New Demand</i>
<i>Street Maintenance</i>	<i>Limited Demand</i>	<i>Meaningful New Demand</i>
<i>Parkland</i>	<i>No Demand</i>	<i>Meaningful New Demand</i>
Water and Electricity	(Other Providers; <b>Not</b> City Service)	(Other Providers; <b>Not</b> City Service)
<b>Overall Fiscal Impact</b>	<b>New Revenue, Limited Service Needs</b>	<b>New Revenue, More Service Need</b>