

ORDINANCE NO. 2022-45

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS AMENDING THE OFFICIAL ZONING MAP OF THE CITY IN CASE NO. ZC-22-24, BY REZONING APPROXIMATELY 136.912 ACRES GENERALLY LOCATED AT 900 FRANCIS HARRIS LANE, FROM “FD” FUTURE DEVELOPMENT DISTRICT TO “CD-2.5” CHARACTER DISTRICT-2.5; INCLUDING PROCEDURAL PROVISIONS; AND PROVIDING AN EFFECTIVE DATE.

RECITALS:

1. On June 14, 2022, the Planning and Zoning Commission of the City of San Marcos held a public hearing regarding a request to change the zoning designation from “FD” Future Development District to “CD-2.5” Character District–2.5 for approximately 136.912 acres of land located at 900 Francis Harris Lane (the “Property”), as described in Exhibit A, attached hereto, and made a part hereof for all purposes.

2. The Planning and Zoning Commission approved a recommendation to the City Council regarding the request.

3. The City Council held a public hearing on July 5, 2022, regarding the request.

4. All requirements pertaining to Zoning Map amendments have been met.

5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The Official Zoning Map of the City is amended to rezone the Property, as described in Exhibit A, from “FD” Future Development District to CD-2.5 Character District-2.5.

SECTION 2. If any word, phrase, clause, sentence, or paragraph of this ordinance is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this ordinance will continue in force if they can be given effect without the invalid portion.

SECTION 3. All ordinances and resolutions or parts of ordinances or resolutions in conflict with this ordinance are repealed.

SECTION 4. This ordinance will take effect after its passage, approval and adoption on second reading and the recording of a Notice and Restrictive Covenant Agreement for the Property providing for notice to potential homebuyers of certain conditions and risks associated with residing near an electric power plant and associated covenants in substantially the form in Exhibit B, attached hereto and made a part hereof.

PASSED AND APPROVED on first reading on July 5, 2022.

PASSED, APPROVED AND ADOPTED on second reading on September 6, 2022.

Jane Hughson
Mayor

Attest:

Elizabeth Trevino
City Clerk

Approved:

Michael J. Cosentino
City Attorney

EXHIBIT A

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. 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; 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, 369.75 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;

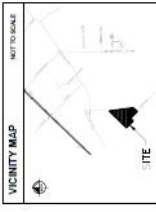
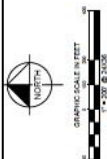
THENCE, North 44°04'47" East 625.64 feet along a fence line to a ½-inch iron rod with a plastic cap stamped "KHA" to the **POINT OF BEGINNING** of the Save and Except described herein;

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 corner;
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;

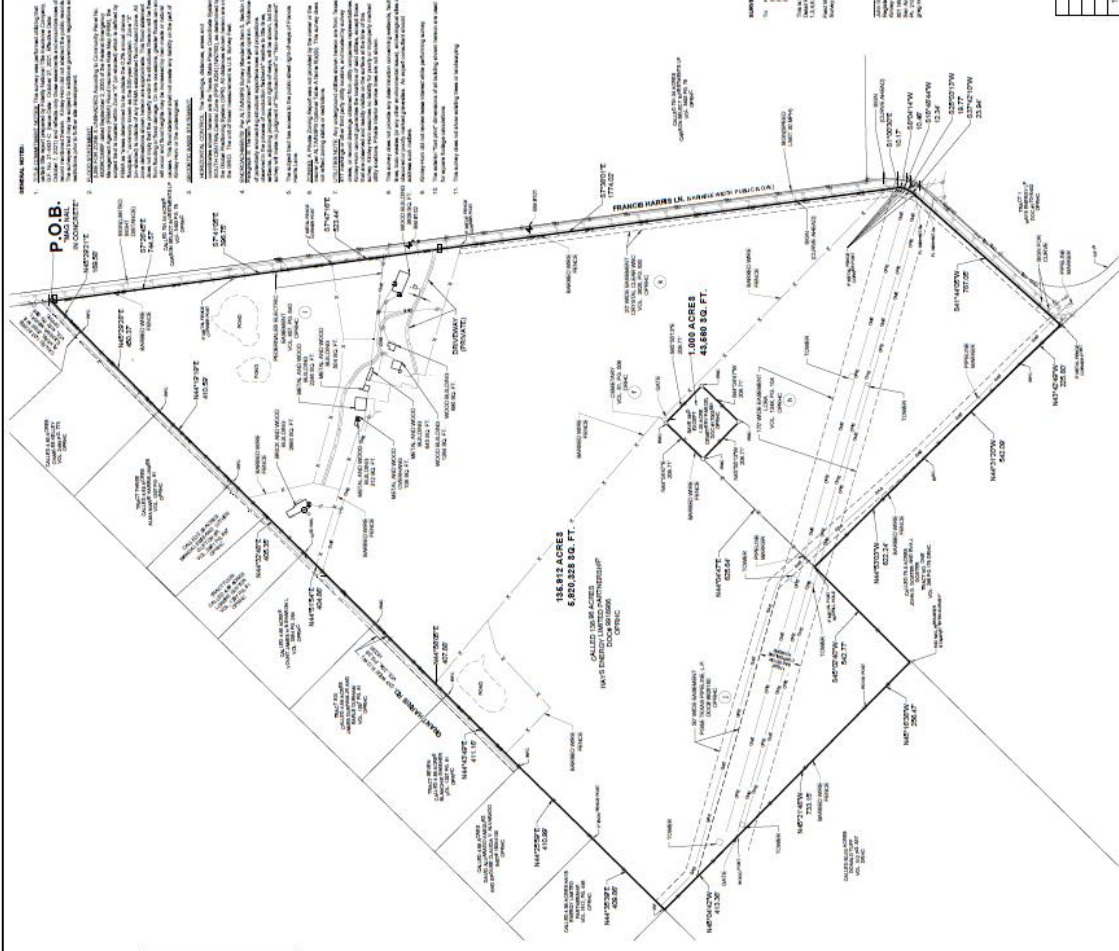
THENCE, North 45°55'13" West 208.71 feet to the **POINT OF BEGINNING**, and containing 1.000 acre (43,560 square feet), for a total of 135.912 acres of land in Hays County, Texas.

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.



LINE TYPE LEGEND	
[Symbol]	Survey Boundary
[Symbol]	Property Boundary
[Symbol]	Right-of-Way Boundary
[Symbol]	Water Boundary
[Symbol]	Other Boundary

LEGEND	
[Symbol]	Survey Boundary
[Symbol]	Property Boundary
[Symbol]	Right-of-Way Boundary
[Symbol]	Water Boundary
[Symbol]	Other Boundary



NOTES:

1. The survey was made from the original plat of the Francis Harris Jr. Subdivision, which was recorded in the Public Records of Hays County, Texas, Book 10, Page 10.
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ALTANSPS LAND TITLE SURVEY
136.912 ACRES
A.M. ESMANIZAR SURVEY, ABSTRACT NO. 6
HAYS COUNTY, TEXAS

Kimley»Horn
SURVEYING & ENGINEERING, P.C.
1000 WEST 10TH STREET, SUITE 100
ARLINGTON, TEXAS 76010
TEL: 817.461.1000
WWW.KIMLEYHORN.COM

REVISION DESCRIPTION	
1	DATE
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EXHIBIT B

NOTICE AND RESTRICTIVE COVENANT AGREEMENT

THIS NOTICE AND RESTRICTIVE COVENANT AGREEMENT (this "**Agreement**") is made and entered into as of the day of _____, 2022, by and between Highlander Real Estate Partners, LLC, (the "**Owner**"), and the City of San Marcos, Texas (the "**City**").

RECITALS:

A. Owner is the owner of a tract of land totaling approximately 136.912 acres situated in Hays County, Texas, more particularly described in **Exhibit "A"**, attached hereto (the "**Property**").

B. Owner desires to develop the Property for single-family residential housing.

C. The Property is adjacent to certain real property owned by Hays Energy, LLC, which sites a combined cycle natural gas power plant that produces electric power (the "**Power Plant**"), and, consistent with typical plant operations, the Power Plant emits noise and lighting that could be considered disruptive to residential homeowners in proximity to the Power Plant.

D. Owner and the City desire to subject the Property to the terms of this Agreement.

NOW, THEREFORE, 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 the parties hereby acknowledge, the Owner and the City do hereby agree as follows:

1. Notice and Restrictive Covenant. The Parties hereto agree and acknowledge that the Property shall be held, sold, transferred, conveyed and occupied subject to the following notice and restrictive covenants:

a) Notice. That the Property is located in proximity to a combined cycle natural gas power plant, and, that the purchaser of lots and those residing therein may experience any of the following as a result of Power Plant operations, even if such operations are in full compliance with the City of San Marcos zoning and ordinances and all applicable permits issued by the Texas Commission on Environmental Quality (TCEQ):

- Noise; and
- Industrial lighting.

b) Restrictive Covenants. The Owner of the Property shall:

i) establish Home Owners Association guidelines which shall require that all residences constructed within 1,500 linear feet from the closest Power Plant vertical structure, in existence on the date of the execution of this Agreement, provide masonry on any façade facing the Power Plant;

ii) construct a six foot (6') masonry or concrete perimeter wall to mitigate sound, as shown on **Exhibit "B"**; and

iii) install Type C Protective Yard Standards (San Marcos Development Code § Section 7.2.2.4.A, Table 7.8) to mitigate sound and light, as shown on **Exhibit "B"**.

2. **No Consent Required.** The Owner and the City each hereby represent and warrant to the other that they have full requisite power and authority to enter into this Agreement without the joinder or further consent of any other party, including without limitation that of any lender, lienholder or tenant, and that this Agreement will not be subordinate to any existing lien or other monetary encumbrance.

3. **Remedies.** The City may pursue any remedies available at law or in equity to enforce the provisions of this Agreement, including the recovery of reasonable attorney's fees and court costs.

4. **No Waiver.** The failure of the City or Owner to avail itself of any of the privileges, rights, covenants, agreements, terms and conditions of this Agreement for any period of time or at any time shall not be construed or deemed to be a waiver thereof, and nothing herein contained, nor anything done or omitted to be done by the City or Owner pursuant hereto, shall be deemed a waiver by the other of any of its rights and remedies hereunder or under the laws of the State of Texas. The enforcement of any right or remedy hereunder by the City, either prior to, simultaneously with, or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

5. **Modification.** This Agreement may not be modified or amended unless such modification or amendment has been reduced to writing approved by the city council of the City and signed by all of the then-existing owners of the Property or portions thereof, and by the City, and has been recorded in the Official Public Records of Hays County, Texas.

6. **Binding Effect.** The obligations created hereunder shall create mutual benefits and servitudes running with the land. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors, heirs and assigns.

7. **Partial Invalidity.** If any provision of this Agreement shall be or become invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby.

[SIGNATURES ON NEXT PAGE]

HIGHLANDER REAL ESTATE PARTNERS, LLC:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

THIS INSTRUMENT was acknowledged before me this _____ day of _____, 2022, by _____, _____ of _____, in such capacity, on behalf of said entity.

Notary Public, State of Texas

CITY OF SAN MARCOS:

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF HAYS §

THIS INSTRUMENT was acknowledged before me this _____ day of _____, 2022, by _____, _____ of the City of San Marcos, in such capacity, on behalf of said municipality.

Notary Public, State of Texas

EXHIBIT A

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. 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; and being more particularly described as follows:

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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;
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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;

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3. North 44°51'54" East, 404.86 feet to a 100D nail found for corner;
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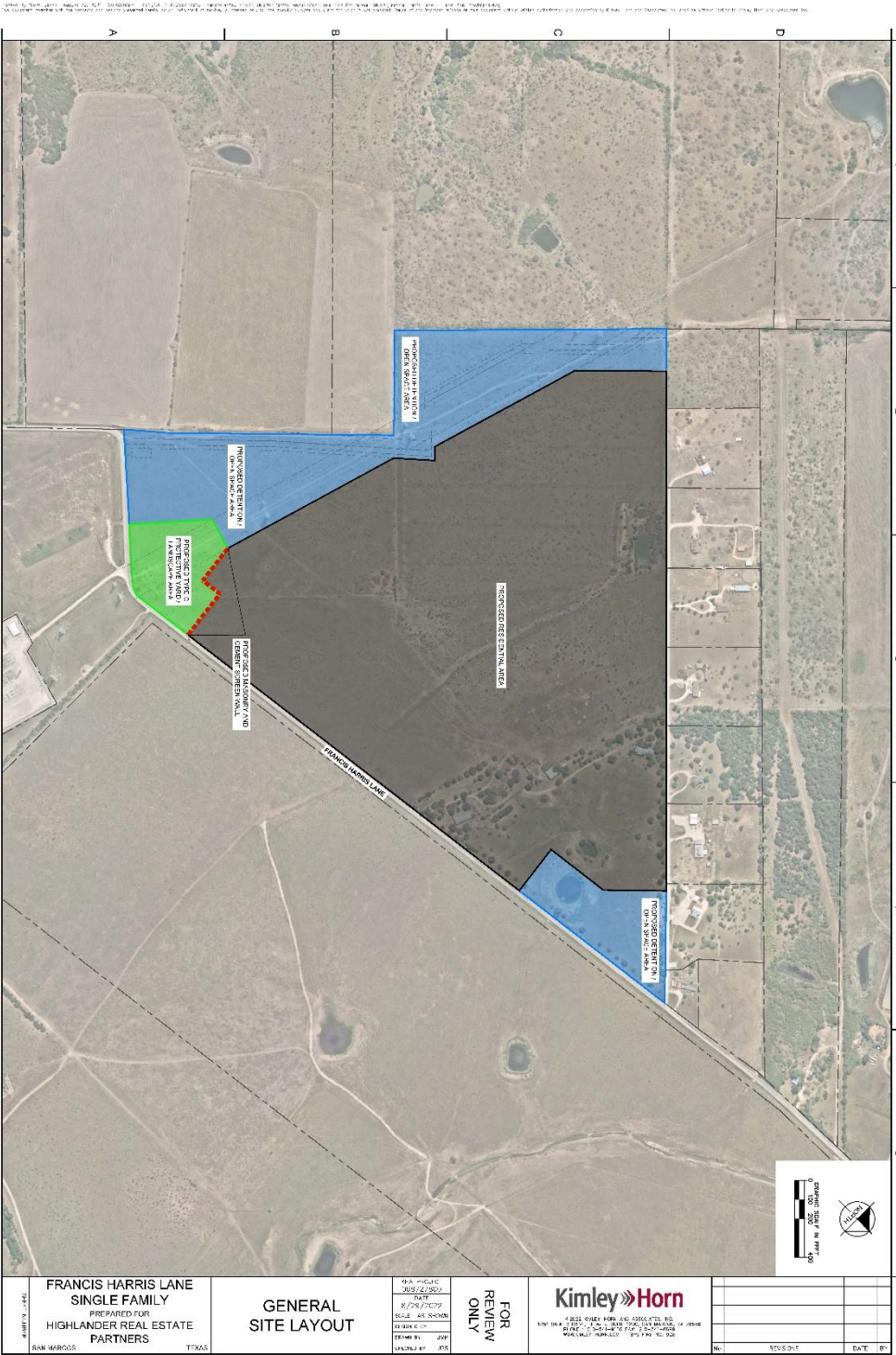
Thence the following three (3) courses and distances across the said 136.96 acre tract:

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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 corner;
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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



[City Clerk to complete the following information regarding restrictive covenant agreement after it is filed. The date of recording is the effective date of the Ordinance.]

Date recorded: _____

Instrument No. _____

County in which recorded: _____