

September 23, 2013



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ENVIRONMENTAL BOARD VARIANCE APPLICATION TEMPLATE

September 23, 2013

Greg Guernsey, Director
City of Austin Planning and Development Review
P.O. Box 1088
Austin, Texas 78767

RE: Apac Texas – Buck, 4220 Buck Lane
SP-2013-0301D, Variance Request

Dear Mr. Guernsey,

As engineers for Apac Texas, a mining operation with ongoing activities in Travis County and Central Texas, we are requesting a variance to allow for a mining haul road to cross the Critical Water Quality Zone of a Minor Waterway.

Section 25-8-41 allows for Land Use Commission Variances from Chapter 25-8, Subchapter A. Specifically, the variance request is from 25-8-392 (Development in a Critical Water Quality Zone). A Findings of Fact for the variance request is included with this resubmittal. Also included is an additional Environmental Assessment for the addition to the limits of construction at the CWQZ crossing.

Sincerely,

Handwritten signature of James F. Scaief.
James F. Scaief, P.E., P.G.

cc: Troy Carter, Apac Texas
Pam Madere, John Joseph (Coats-Rose)

File: 11001.25

Attachments

PROJECT DESCRIPTION

Applicant Contact Information

Name of Applicant Apac Texas
Street Address 1 Chisolm Trail, Ste. 450
City State ZIP Code Round Rock, Texas 78681
Work Phone 512-919-1221
E-Mail Address Troy.Carter@apac.com



Variance Case Information

Case Name Apac Texas – Buck
Case Number SP-2013—0301D
Address or Location 4220 Buck Lane
Environmental Reviewer Name Jim Dymkowski
Applicable Ordinance LDC 25-8-392
Watershed Name Colorado River
Watershed Classification Urban **Suburban** Water Supply Suburban
 Water Supply Rural Barton Springs Zone
Edwards Aquifer Recharge Zone Barton Springs Segment Northern Edwards Segment
 Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone Yes **No**
Distance to Nearest Classified Waterway On site of variance request
Water and Waste Water service to be provided by N/A
Request The variance request is as follows:
25-8-392 (Development in a Critical Water Quality Zone)

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| Impervious cover | Existing | Proposed |
|------------------|---------------|---------------|
| square footage: | <u>44,867</u> | <u>54,886</u> |
| acreage: | <u>1.03</u> | <u>1.26</u> |
| percentage: | <u>0.24%</u> | <u>0.29%</u> |

Provide general description of the property (slope range, elevation range, summary of vegetation / trees, summary of the geology, CWQZ, WQTZ, CEFs, floodplain, heritage trees, any other notable or outstanding characteristics of the property)

The site is currently in agricultural production. A Minor Waterway crosses the southern portion from southwest to northeast. This is the waterway for which this variance request to cross is required, so discussion is focused mostly on this area. The only structures on the property, all well beyond the area of the variance request, consist of a house and various farm buildings.

Cultivation has historically crossed the waterway due to the lack of channel definition. However, on the basis of drainage area, the drainage is Classified. Vegetation is limited to agricultural production at the time. In recent history it has ranged from corn, to sunflowers, to pasture. Geologically, the site is overlain by Lower Colorado River Terrace Deposits consisting of sand, silt, clay, and gravel as depicted in the Geologic Map of the Austin Area, Texas, 1980. These materials were deposited by the meandering of the Colorado River over recent geologic time.

Slopes are all in the 0% - 15% category, though the entire area is better characterized by less than 1% to 4%. Elevation ranges from 432 at the southern end of the permit area to 406 in the lower reach of the drainage. Soils in the CWQZ consist of the Altoga, Bergstrom, Heiden, and Houston Black Series. These all are described in the NRCS Soil Survey of Travis County (Survey) as being of silty loam to clay in composition. None of these soils are described in the Survey as "frequently flooded" as compared to soils in other drainages in the area. This provides further evidence for the lack of storm flow frequent enough for channel formation in the drainage. A typical cross-section of the drainage consists of a gentle slope away from a generally flat 'channel'. No bed and bank exists. Photographs included with this variance request illustrate the characteristics of the drainageway.

The Environmental Assessment found no CEFs nor any other notable or outstanding characteristics of the property.

Clearly indicate in what way the proposed project does not comply with current

Current code does not allow development in the CWQZ. Current code does allow for an Administrative Variance for a street crossing of a Minor Waterway. However, as this is a private crossing it does not meet the definition of a street, thus it follows

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Code (include maps and exhibits)

that to allow a crossing requires granting a variance for development in the CWQZ. The Code section for the variance is 25-8-392 (Development in a Critical Water Quality Zone). The attached exhibits indicate both the location and nature of the proposed crossing along with photographs of the crossing location.

FINDINGS OF FACT

As required in LDC Section 25-8-41, in order to grant a variance the Land Use Commission must make the following findings of fact:

Include an explanation with each applicable finding of fact.

Project: Apac Texas – Buck, SP-2013-0301D

Ordinance:

A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:

1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development.

Yes. *Denial of variance prohibits owner from accessing other portions of the property under the same permit application and prevents full utilization of the property under the law.*

2. The variance:

- a) Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;

Yes. *The land is unchanged from its historical legal lot configuration and the variance is necessary to access all portions of the owner's property.*

- b) Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property;

Yes. *Denial of the variance deprives the owner access to all portions of the property for its intended use.*

c) Does not create a significant probability of harmful environmental consequences; and

Yes. *There is no significant probability of harmful environmental consequences as the crossing will consist of a single, low-impact, at grade drive with the current agricultural activity in the CWQZ to be terminated with construction of the drive. The drive will consist of a 50 foot wide perpendicular crossing of the 6700 linear feet of the CWQZ within the permit area. By constructing the drive 'at grade', meaning even with existing ground, the flow characteristics of the drainage will be maintained and no flow will be concentrated nor will the floodplain be affected as would occur with a culvert.*

3. Development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

Yes. *Area has historically been and is currently under agricultural production, including the area of the CWQZ. Granting of the variance will reduce activity within the CWQZ due to the termination of agricultural activity resulting in only the single drive as the activity in the CWQZ. The reduction of CWQZ activity and the disturbed area restoration with native grasses will raise the environmental benefit.*

B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-393 (Water Quality Transition Zone), Section 25-8-423 (Water Quality Transition Zone), Section 25-8-453 (Water Quality Transition Zone), or Article 7, Division 1 (Critical Water Quality Zone Restrictions):

1. The criteria for granting a variance in Section A are met;

Yes. *Chapter 25-8-241 allows for the Land Use Commission to grant a variance from 25-8-392. Of the range of variances granted by the Commission, this one has to fall in the category of the least departure from the Code. No high quality vegetative or riparian vegetation occurs within the Critical Water Quality Zone. The entire zone consists of agricultural production. Historically, agricultural production has consisted of corn, sunflowers, and pasture. The environmental assessment found no critical environmental features.*

The drainage is a Minor Waterway by definition only due to the contributing drainage area. There is no definition of a bed and bank that normally characterizes a stream channel. The topography consists of a gradual slope to a generally flat area and a repeat of the gradual slope on the opposite

side. Because of this gentle topography, the area has been amenable to cultivation. Soils in the CWQZ consist of the Altoga, Bergstrom, Heiden, and Houston Black Series. These all are described in the NRCS Soil Survey of Travis County (Survey) as being of silty loam to clay in composition. None of these soils are described in the Survey as "frequently flooded" as compared to soils in other drainages in the area. This provides further evidence for the lack of storm flow frequent enough for channel formation in the drainage.

The proposed crossing will not alter the existing topography. The crossing will consist of a concrete travel surface 50 feet wide. It will be constructed level with the topography so that when any storm flow occurs, it will be spread over the same width as if the crossing did not exist. There will be no impact upon the floodplain. The crossing, being at existing land grade, is of low impact as compared to one elevated to accommodate a culvert. The disadvantage of the latter is the elevated crossing increases the floodplain, and the culvert creates a concentrated discharge with increased velocities. The approaches to the Critical Water Quality Zone will consist of a raised profile or hump to divert runoff away from the road rather than down the road and into the CWQZ. The disturbed area within the CWQZ outside the limits of the concrete will be restored per the City's 609S revegetation criteria consisting of native grasses. Temporary erosion controls will be in place during construction.

Without the variance, the owner is not able to legally access all portions of the property. The property has legal lot status without the subdivision process, thus the need for the variance is not due to the manner the property is subdivided. Any site development of this property would require the same variance.

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and

Yes. *The intended use is mining and without the variance, access to all portions of the property for the proposed use, or any other permitted use cannot occur on a majority of the property.*

3. The variance is the minimum change necessary to allow a reasonable, economic use of the entire property.

Yes. *The request is for a single crossing of a minor drainage which will allow the intended activity on the majority of the property. The crossing is low impact, to be constructed level with the existing topography, and will have no impact on the floodplain or existing drainage patterns. The only vegetation impacted by the crossing is seasonal agricultural production.*

****Variance approval requires all above affirmative findings.**