

RESTRICTIVE COVENANT TERMINATION REVIEW SHEET

CASE: C14-2012-0067(RCT) **PC DATE:** February 11, 2014
La Estancia del Rio

ADDRESS: 1700 ½ Frontier Valley Drive **AREA:** 9.542 acres

OWNER: Standard Pacific Homes of Texas, Inc. (Jay Byler)

AGENT: Big Red Dog Engineering (Kaitlin Redmon)

CURRENT ZONING: ERC (Neighborhood Residential Subdistrict)

NEIGHBORHOOD PLAN AREA: East Riverside Corridor
Montopolis Neighborhood Plan Area

REQUEST: Termination of a Public Restrictive Covenant

SUMMARY STAFF RECOMMENDATION:

Staff recommendation is to grant termination of the public restrictive covenant.

PLANNING COMMISSION ACTION:

To be considered February 25, 2014

February 11, 2014

Postponed at the request of the Montopolis Neighborhood Plan Contact Team (Consent Motion: Hatfield; Second: D. Chimenti) 5-0 (Absent: A. Hernandez; S. Oliver, B. Roark, J. Stevens)

DEPARTMENT COMMENTS:

With the adoption of the East Riverside Corridor Regulating Plan in May 2013, and its associated Collector Plan, the public restrictive covenant (RC) adopted in 2012 is no longer necessary. The right-of-way reserve promised in the RC is now a requirement under the Collector Plan, and its on-the-ground location has been identified. Similarly, compliance with the Regulating Plan's design elements and site development standards is now required for development of the site, making those items within the RC redundant.

HISTORY:

This public restrictive covenant (RC) impacts a 9.542-acre tract of land on the west side of Frontier Valley Road, north of East Riverside Drive (see Exhibits A). In early 2012 a rezoning application was submitted to rezone approximately 10.65 acres from CS-NP to CS-MU-NP, with the intention of developing an affordable housing project, funded in part, through State tax credits. The request was approved by the Planning Commission with conditions, including a 2,000 vehicle trips per day maximum, a maximum limit of 252 residential units, and the application of MF-3 site development standards if developed as multifamily.

Subsequently, but before the application was considered by the City Council, the application was amended to a request for MF-3-NP rather than CS-MU-NP. This amended application was ostensibly the same proposal, but with one noteworthy change regarding connectivity.

The zoning request was being considered prior to adoption of the East Riverside Corridor Regulating Plan (ERCRP). Although there was broad interest in securing right-of-way for a future collector street as depicted in the adopted East Riverside Corridor Master Plan and draft ERCRP, there was uncertainty about exactly where the envisioned right-of-way could, would, or should be located, and acknowledgement that until the ERCRP was adopted, the applicant could not be compelled to comply with the connectivity envisioned in the ERCRP.

After approval of the neighborhood plan amendment and rezoning case by the Commission, the applicant revised the preliminary site plan. It was proposed that the multifamily project would be developed with a 70-foot wide right-of-way reserve that crosses the property from east to west, essentially bisecting the tract. Although the interim uses of the right-of-way reserve space were undetermined at the time, the intent was that this strip of land would be used as a driveway, pedestrian and bicycle path, or similar uses by the residents of the multifamily project until such time the City requested the right-of-way be conveyed. Once this reserve was conveyed to the City, the multifamily development would essentially split into a northern and southern portion, bisected by a public, local-level collector. The applicant was willing to document this right-of-way reserve and future conveyance to the City through a restrictive covenant that was approved in tandem with the rezoning ordinance adopted by Council (see Exhibit B).

One challenge in preparing the restrictive covenant was that the location of the future east-west collector, corresponding to the right-of-reserve, was unknown. The applicant attempted to coordinate the reserve's location with an abutting property owner to the west, so that a continuous east-west alignment could be realized when the abutting property was developed. There was, however, a disagreement about the preferred location for the roadway, with one preferring a location approximately 1,000 feet north of Riverside Drive, which was significantly further north than the applicant desired.

In the end, the applicant attempted to mirror the location of the collector in a general area as depicted in the draft ERCRP. It was understood by all that the location of the reserve was only generally depicted in the restrictive covenant, and did not establish the ultimate alignment.

The acreage of the rezoning tract also changed with the amended MF-3-NP request; specifically, it was reduced by approximately one-acre, from 10.65 to 9.542 acres. The applicant already controlled 7-plus acres of MF-3 zoning north of the rezoning tract, and 6-plus acres of CS-MU along E. Riverside. The developed 252-residential unit project was to occupy approximately 15 acres, the existing 7 acres to the north, and the northern portion of this rezoned middle piece. The southern portion of this rezoned middle piece would be combined with the existing CS-MU-NP acreage abutting Riverside.

The Planning Commission recommended and City Council approved the amended zoning request with the condition that a restrictive covenant be executed memorializing the right-of-way reserve commitment. That document also included compliance with certain site and building requirements of Subchapter E, Design Standards and Mixed Use.

If multifamily was developed under the CS-MU zoning district as initially requested, development of the site would have required compliance with commercial design standards, owing to its commercial base zoning district. If multifamily was developed under and multifamily zoning district as requested with the amendment, the commercial design standards would not apply. Consequently, and to reflect the expectations of development within the East Riverside Corridor area (as contemplated in the draft ERCRP), certain site

and building design elements and development standards were incorporated into the restrictive covenant.

Much has happened since the rezoning was approved and the public restrictive covenant recorded. The proposed affordable housing project was not selected for funding in the competitive tax credit program. In May 2013 the ERCRP was adopted by Council, and with it a Collector Plan for the East Riverside Corridor that depicts the east-west collector across this property as Pedestrian Priority (see Exhibit C). At the same time the property was rezoned to ERC (East Riverside Corridor) and assigned a Neighborhood Residential subdistrict designation.

A preliminary plat for this property (C8-2013-0154) is under review. The proposal for 22.23 acres, which includes the 9 acres covered by the restrictive covenant, includes two lots; one approximately 18-acre lot is designated for single-family use with 117 units while the second 4-acre lot is designated multifamily with 66 units. This project is known as Park Place at Riverside. To the west, a preliminary plat (C8-2013-0133) for 18 acres and final plat (C8-2013-0133.1A) of 10 acres, known as Riverside Vargas Subdivision – Idea School, was recently approved (January 28, 2014) by the Planning Commission. This property, at approximately 11 acres, was platted for civic use, but also included the dedication of a 56' collector street to be known as Idea Road.

Transportation and urban design staff have confirmed the proposed alignment and configuration of a proposed 56' wide east-west collector that connects and crosses both properties is in conformance with the ERCRP. Similarly, transportation and urban design staff have confirmed that development of the site must conform to ERC subdistrict standards, which includes all of the layout/design items contained in the restrictive covenant. So, with adoption of the ERCRP, the public RC has become redundant.

Though the right-of-way for this collector will not be legally dedicated until the time of plat recordation, the owner – or any subsequent owner – must comply with the adopted collector plan. The City no longer needs a public RC for this dedication. Similarly, though parking and building location will be reviewed at a site planning stage, compliance is assured through the adopted ERCRP, negating the need for the public RC.

EXISTING ZONING AND LAND USES:

	ZONING	LAND USES
<i>Site</i>	ERC	Undeveloped (single-family and multifamily residential uses proposed)
<i>North</i>	MH-NP; SF-3-NP	Undeveloped (RV Park proposed); Single-family Residential
<i>East</i>	ERC (NR)*; SF-3-NP	Multifamily, Undeveloped, & Convenience Storage; Single-family Residential
<i>South</i>	ERC (NMU)*;	Undeveloped; East Riverside Drive
<i>West</i>	ERC (NR)*; SF-3-NP	Undeveloped (civic use proposed); Single-family Residential

* NR – Neighborhood Residential Subdistrict; NMU – Neighborhood Mixed Use Subdistrict

TIA: Not Required

WATERSHED: Carson Creek

DESIRED DEVELOPMENT ZONE: Yes

CAPITOL VIEW CORRIDOR: No

HILL COUNTRY ROADWAY: No

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5**NEIGHBORHOOD & COMMUNITY ORGANIZATIONS:**

COMMUNITY REGISTRY NAME	REGISTRY ID
Crossing Gardenhome Owners Assn. (The)	299
El Concilio, Coalition of Mexican American Neigh. Assn.	477
Austin Neighborhoods Council	511
Montopolis Area Neighborhood Alliance	634
Austin Independent School District	742
Del Valle Independent School District	774
PODER People Organized in Defense of Earth & Her Resources	972
Homeless Neighborhood Organization	1037
Bike Austin	1075
Riverside Meadows Homeowner's Association	1131
Carson Ridge Neighborhood Association	1145
Vargas Neighborhood Association	1179
Super Duper Neighborhood Objectors and Appeals Organization	1200
Austin Monorail Project	1224
Sierra Club, Austin Regional Group	1228
The Real Estate Council of Austin, Inc.	1236
Pleasant Valley	1255
Del Valle Community Coalition	1258
Montopolis Tributary Trail Association	1321
Montopolis Neighborhood Association 2008	1339
Austin Heritage Tree Foundation	1340
Montopolis Community Alliance	1357
SEL Texas	1363
Montopolis Neighborhood Association El Concilio	1394
Preservation Austin	1424

SCHOOLS:

Del Valle Independent School District:

Smith Elementary

John P. Ojeda Middle School

Del Valle High School

RELATED CASES:

NUMBER	REQUEST	LAND USE COMMISSION	CITY COUNCIL
Rezoning C14-84-310	I-A to CS for 1000 depth on Riverside and MF-3 for remainder.	Recommended 10/16/1984;	Approved; 03/06/1985
Public RC C14-84-310RC	Created 50' setback along west and north		Approved 08/28/1985; (Included dedication of

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	property line		ROW along Frontier Valley)
Neighborhood Plan Amendment NPA-2011-0005.01	Commercial to Higher Density Single Family and Mixed Use	Recommended 04/12/2011	Denied 06/23/2011
Rezoning C14-2010-0204	CS-NP, MF-3-NP & CS-MU-NP to SF-4A	Recommended 04/12/2011	Denied 06/23/2011
Termination of 1984 Public RC C14-84-310(RCT)	Terminate RC	Recommended 06/14/2011	Approved 06/23/2011
Land Status Determination C8I-2012-0173	Exemption from Platting	N/A; Administratively Approved 07/25/2012	
Neighborhood Plan Amendment NPA-2012-0005.01	Commercial to Neighborhood Mixed Use on FLUM	Recommended 09/11/2012	Approved 10/18/2012
Rezoning C14-2012-0067	CS-NP to CS-MU	Recommended 09/11/2012	Approved with conditions 10/18/2012; RC requires ROW reserve & site dev. standards
	CS-NP to MF-3-NP, as amended	Recommended 10/09/2012	

In addition, in 2001 the Montopolis Neighborhood Plan was adopted, and the NP designation was appended to the parcel's base CS and MF-3 zoning (C14-01-0006). Property was reassigned to ERC zoning, and attendant subdistrict designations, with adoption of the East Riverside Corridor Regulating Plan in 2013 (C14-2012-0112 for this area). As noted above, a preliminary plan (Park Place at Riverside) for 22-plus acres, including the subject tract, is under review (C8-2012-0154).

AREA CASES:

NUMBER	REQUEST	PLANNING COMMISSION	CITY COUNCIL
C14-84-310; C14-84-310-RC (this includes subject tract and undeveloped property immediately south and north)	I-SF-3 to MF-3 and CS	Approved; 10/24/1984	Approved; 3/6/1986
C14-01-0060 (this includes subject tract and undeveloped property immediately south	CS, MF-3 to CS-MU-NP for the first 300' from Riverside Drive; CS-NP and MF-3-NP for	Approved; 08/07/2001	Approved; 09/27/2001

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and north)	remainder of site		
(undeveloped property to west)	SF-3 to CS-MU-NP for the first 300' from Riverside Drive; SF-3-NP for remainder of site	Approved; 08/07/2001	Approved; 09/27/2001
(property to east – condominiums)	CS to CS-MU-NP	Approved; 08/07/2001	Approved; 09/27/2001
(property to east – convenience storage)	CS to GR-MU-NP	Approved; 08/07/2001	Approved; 09/27/2001
(property to east – undeveloped)	CS to CS-NP	Approved; 08/07/2001	Approved; 09/27/2001
(property to east – apartments) C14-01-0060	SF-2 to SF-2-NP;	Approved; 08/07/2001	Approved; 09/27/2001
C14-05-0026	SF-2-NP to MF-3-CO-NP	Approved; 04/12/2005	Approved; 08/18/2005

ABUTTING STREETS:

Street Name	ROW Width	Pavement Width	Classification	Bicycle Plan/Route	Bus Service	Sidewalks
Frontier Valley Drive	65 Feet	38 Feet	Collector	No	No	No (required with site development)

CITY COUNCIL DATE:

Scheduled for Consideration March 6, 2014

ORDINANCE READINGS: 1st**ORDINANCE NUMBER:**

CASE MANAGER: Lee Heckman
e-mail address: lee.heckman@austintexas.gov

PHONE: (512) 974-7604

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8**SUMMARY STAFF RECOMMENDATION**

Staff recommendation is to grant termination of the public restrictive covenant.

BASIS FOR RECOMMENDATION

The request is for termination of the existing public restrictive covenant only.

This is not a request to change the existing ERC zoning, or its subdistrict designation of neighborhood residential.

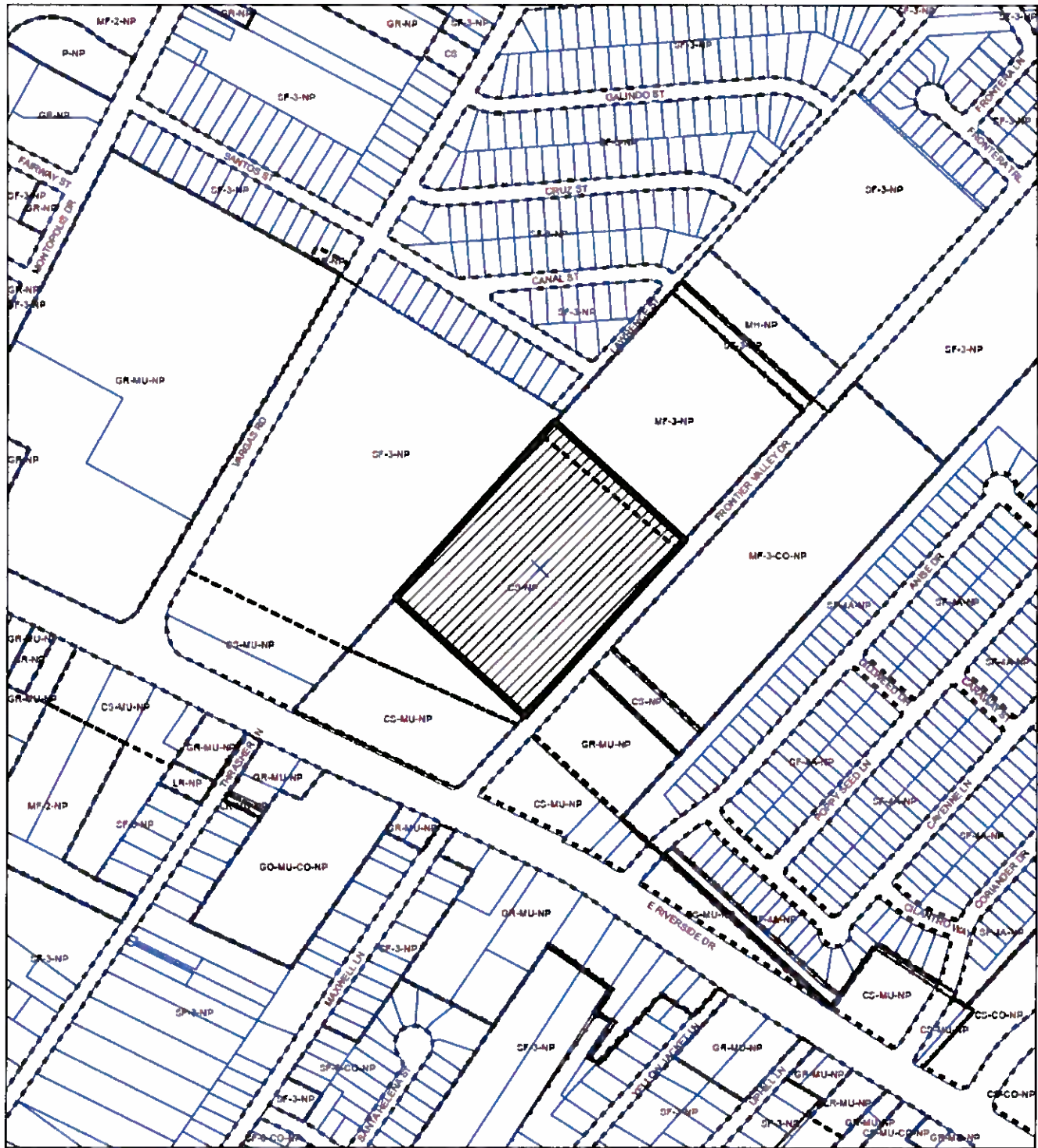
As discussed under the History section, the two primary requirements of the restrictive covenant, right-of-way reserve and select commercial design standards, are now required for any development of the site because the East Riverside Corridor Plan has been adopted. The covenant document is no longer necessary and is redundant.

EXISTING CONDITIONS**Site Characteristics**

The approximate 9.5-site is an undeveloped tract currently zoned ERC northwest of the intersection of East Riverside Drive and Frontier Valley Drive. The subject property is undeveloped with a mix of small and medium-sized trees and shrubbery. It is relatively flat and there appear to be no significant topographical constraints or environmental features on the site.

A preliminary plan, Park Place at Riverside, includes this tract, as well as property to the north and south totaling about 22 acres, and is currently under review. The preliminary plan includes multifamily and single-family type housing, and will include right-of-way that ties into the east-west collector known as Idea Road, that will stretch from Vargas Road to Frontier Valley.

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SUBJECT TRACT

PENDING CASE

ZONING BOUNDARY

1"= 400"

ZONING

ZONING CASE#: C14-2012-0067



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

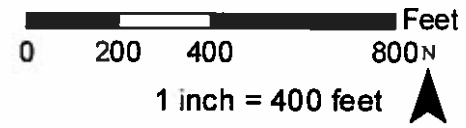
Exhibit A - Zoning Map

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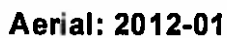


Aerial: 2012-01

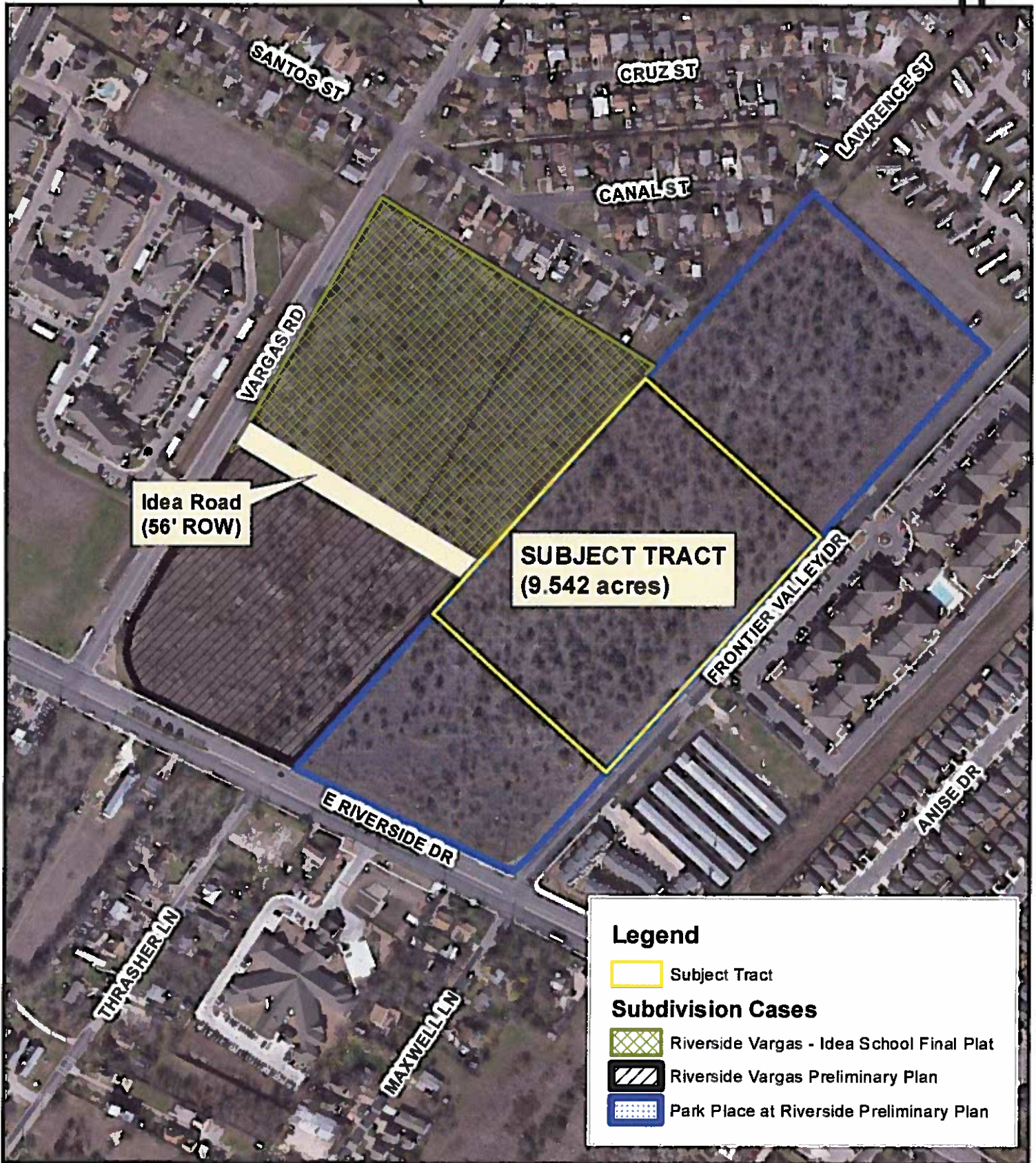
Exhibit A - 1
Aerial



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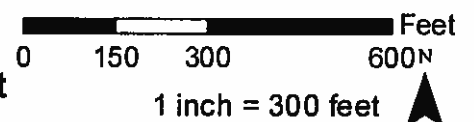
0 200 400 800 Feet
1 inch = 400 feet



Aerial: 2012-01

Exhibit A - 3

Aerial with Preliminary Plans & Final Plat





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Zoning Case No. C14-2012-0067

RESTRICTIVE COVENANT

OWNER: Equity Secured Capital, LP

ADDRESS: 1700 ½ Frontier Valley Drive, Austin, Texas 78741

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: A 9.542 acre tract of land out of the Santiago Del Valley Grant, said acre tract of land being more particularly described by metes and bounds in Exhibit "A" attached and incorporated into this covenant.

WHEREAS, the Owner (the "Owner", whether one or more), of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant ("Agreement"). These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. Owner agrees to reserve 70 feet of right-of-way perpendicular to the center line of Frontier Valley Drive for future right-of-way, under Sections 25-6-51 through 25-6-54 in Chapter 25-6 of the City Code. A building or structure may not be erected nor may improvements be made within the reserved right-of-way as determined by the Planning and Development Review Department, except as otherwise authorized by the City of Austin. Said right-of-way is generally depicted on Exhibit "B" attached.
2. Development of the Property shall comply with Subchapter E, Subsection 2.2.3 of Section 25-2 of the City Code in the following manner:
 - a. Buildings adjacent to Frontier Valley Drive shall be oriented towards Frontier Valley Drive and buildings adjacent to a right-of-way reserve shall be oriented towards the reserve;
 - b. Surface parking shall be interior to the site; and,
 - c. Sidewalks shall be provided along Frontier Valley Drive.

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3. If any person or entity shall violate or attempt to violate this Agreement, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Agreement, to prevent the person or entity from such actions, and to collect damages for such actions.
4. If any part of this Agreement is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Agreement, and such remaining portion of this Agreement shall remain in full effect.
5. If at any time the City of Austin fails to enforce this Agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
6. This Agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property, or a portion of the Property, subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 18th day of October, 2012.


OWNER:

EQUITY SECURED CAPITAL, LP
a Texas limited partnership

By: EQUITY SECURED INVESTMENTS, INC.
a Texas corporation
its General Partner

By: 
Vincent M. DiMare, Jr.
President

APPROVED AS TO FORM:


Chad Shaw
Assistant City Attorney
City of Austin

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THE STATE OF TEXAS §

COUNTY OF TRAVIS §

This instrument was acknowledged before me on this the 18th day of October, 2012, by Vincent M. DiMare, Jr. President of Equity Secured Investments, Inc., general partner of Equity Secured Capital, LP, a Texas limited partnership, on behalf of the limited partnership.



Candy Hinkle
Notary Public, State of Texas

After Recording, Please Return to:
City of Austin
Law Department
P. O. Box 1088
Austin, Texas 78767
Attention: J. Collins, Paralegal

Exhibit " ____ "

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Field Notes

BEING 9.542 ACRES OF LAND, MORE OR LESS, OUT OF AND A PART OF THE SANTIAGO DEL VALLE GRANT, IN TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF THE 22.23 ACRE TRACT CONVEYED TO EQUITY SECURED CAPITAL, LP BY SUBSTITUTE TRUSTEE'S DEED, EXECUTED ON MAY 6, 2010 AND FILED FOR RECORD ON JUNE 4, 2010, RECORDED IN DOCUMENT 2010079698 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, SAID 9.542 ACRES OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS AND AS SHOWN ON THE ATTACHED SKETCH:

BEGINNING at a calculated point in the northwesterly right-of-way line of Frontier Valley Drive (R.O.W. varies), and in the southeasterly line of said 22.23 acre Equity Secured Capital, LP tract, for the Point of Beginning and the most easterly corner of the herein described tract of land, from which a calculated point at the most easterly corner of said 22.23 acre Equity Secured Capital, LP tract and in the southwesterly line of the tract conveyed to FVMHP, LP by deed recorded in Document 2009191342 of the Official Public Records of Travis County, Texas bears North 45°32'54" East, a distance of 600.00 feet and from the most easterly corner of said 22.23 acre Equity Secured Capital, LP tract a 1/2 inch iron rod found bears North 45°32'54" East, a distance of 0.11 feet;

1) THENCE, South 45°32'54" West, a distance of 749.40 feet, with the northwesterly right-of-way line of Frontier Valley Drive and the southeasterly line of said 22.23 acre Equity Secured Capital, LP tract, to 5/8 inch iron rod with MWM cap set for the most southerly corner of the herein described tract of land, from which a 1/2 inch iron rod found at the intersection of the northwesterly right-of-way line of Frontier Valley and the northeasterly right-of-way line of East Riverside Drive (R.O.W. varies), same being a southeasterly corner of said 22.23 acre Equity Secured Capital, LP tract bears South 45°32'54" West, a distance of 293.03 feet;

2) THENCE, North 44°33'13" West, a distance of 553.30 feet, leaving the northwesterly right-of-way line of Frontier Valley Drive and the southeasterly line of said 22.23 acre Equity Secured Capital, LP tract and crossing said 22.23 acre Equity Secured Capital, LP tract, to a 5/8 inch iron rod with MWM cap set in the northwesterly line of said 22.23 acre Equity Secured Capital, LP tract and the southeasterly line of the 17.09 acre tract conveyed as Tract VI, to Vargas Properties I, Ltd., by deed recorded in Volume 12842, Page 557 of the Real Property Records of Travis County, Texas, for the most westerly corner of the herein described tract of land, from which an iron rod found in the northeasterly right-of-way line of East Riverside Drive and at the most westerly corner of said 22.23 acre Equity Secured Capital, LP tract and the most southerly corner of the 1.01 acre tract conveyed as tract VII to Vargas Properties I, Ltd., by deed recorded in Volume 12842, Page 557 of the Real Property Records of Travis County, Texas, bears South 45°22'45" West, a distance of 480.00 feet;

3) THENCE, North 45°22'45" East, a distance of 750.00 feet, with the northwesterly line of said 22.23 acre Equity Secured Capital, LP tract and the southeasterly line of said 17.09 acre Vargas Properties I, Ltd. tract to a calculated point for the most northerly corner of the herein described tract of

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I hereby declare that this survey was made on the ground, under my supervision, and that it substantially complies with the current Texas Society of Professional Surveyors standards.

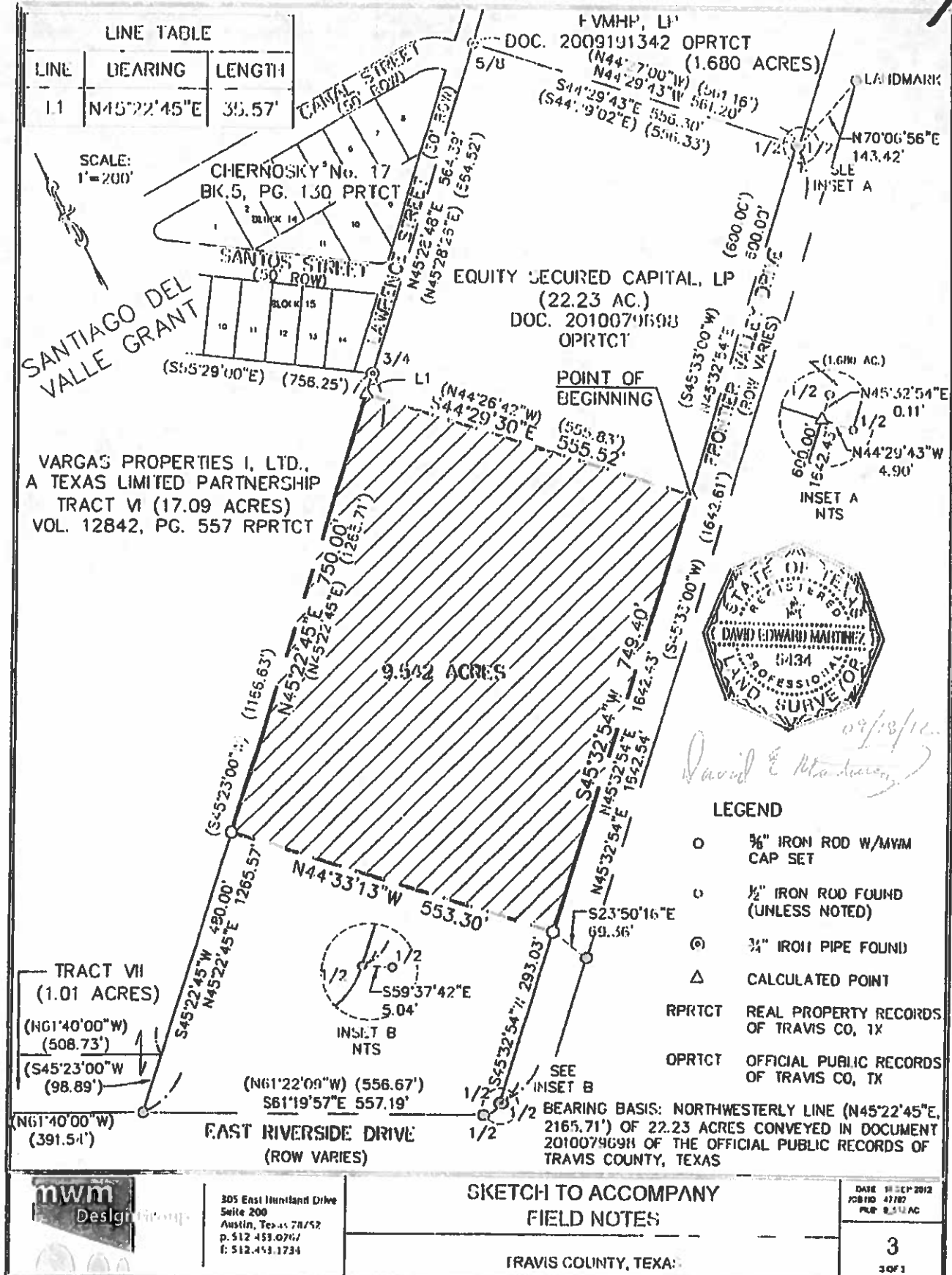
Date: 09/13/12



Leasing Basis: Northwesterly line (North 45°22'45" East, 1265.71') of 22.23 acres conveyed Equity Secured Capital, LP in Document 2010079698 of the Official Public Records of Travis County, Texas

TCAD No.: 0309160106
CITY GRID No.: 118

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Adjoining Owner's Plan

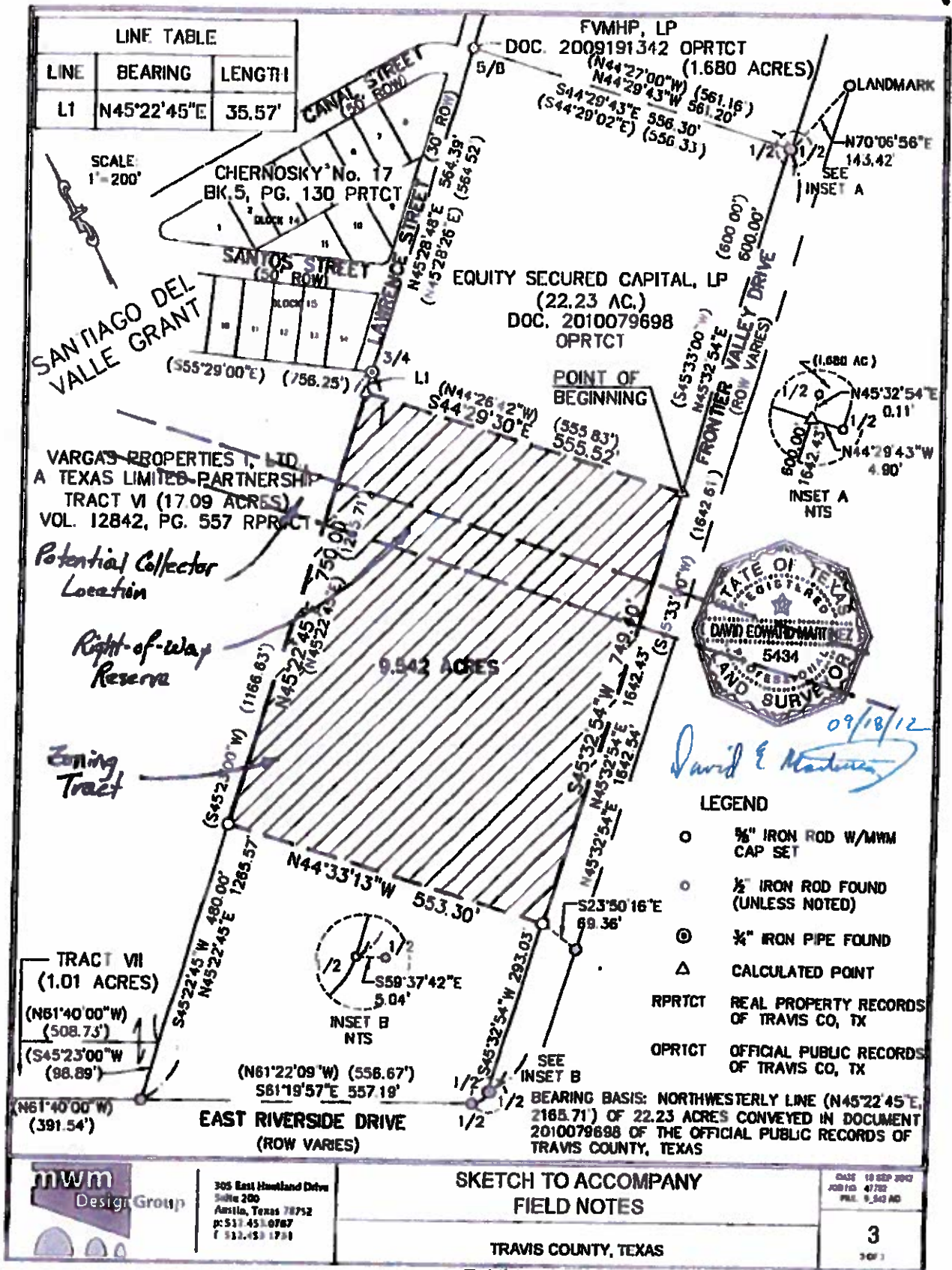


Exhibit B - 7

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FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

Oct 26, 2012 02:42 PM

2012181994

HAYWOODK: \$44.00

Dana DeBeauvoir, County Clerk

Travis County TEXAS

Recorders Memorandum-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

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Figure 1-5: East Riverside Corridor Collector Street Map
Shows existing and new streets designated as Collector streets.

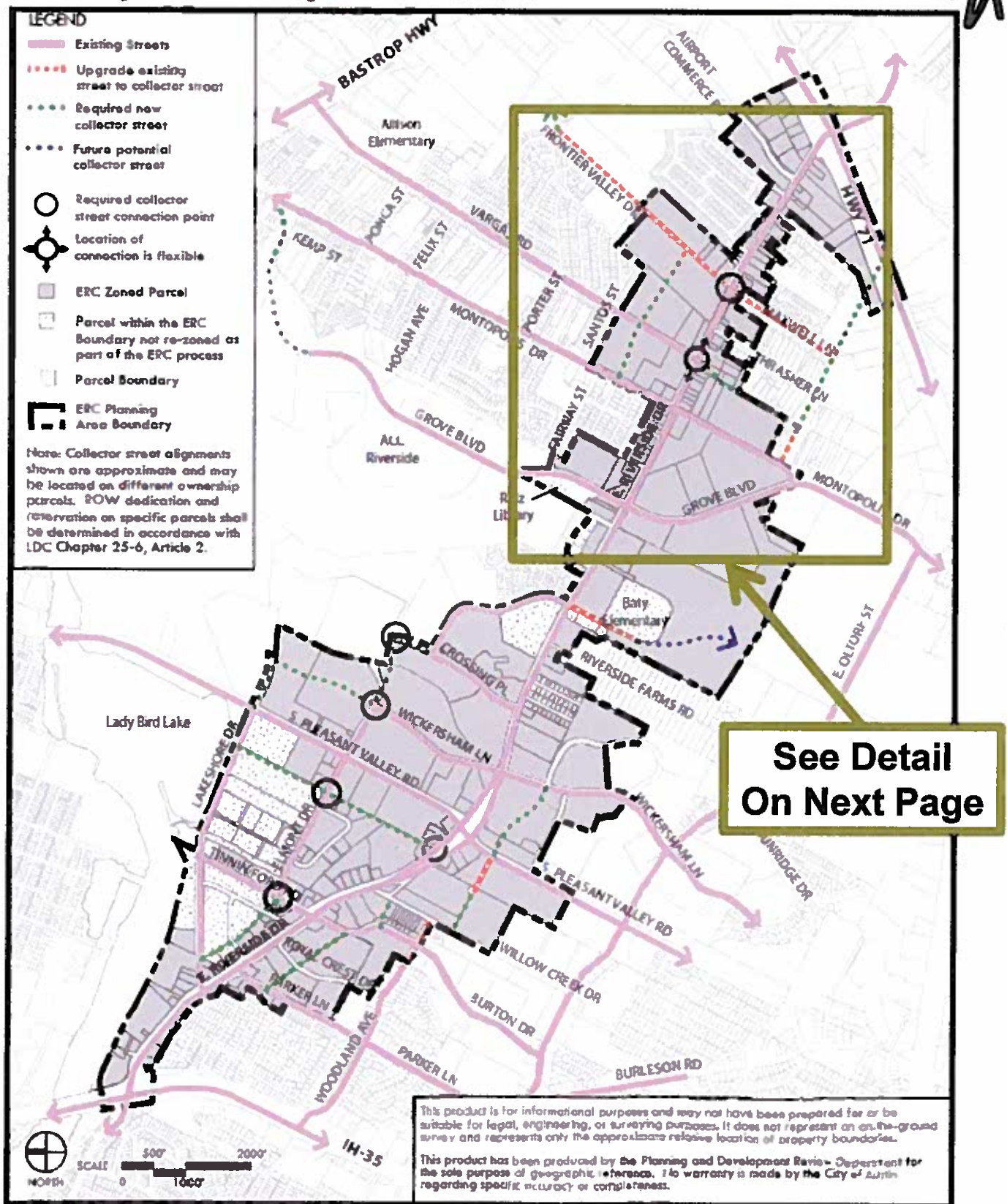


Exhibit C - 1 ERC Regulating Plan, Collector Plan

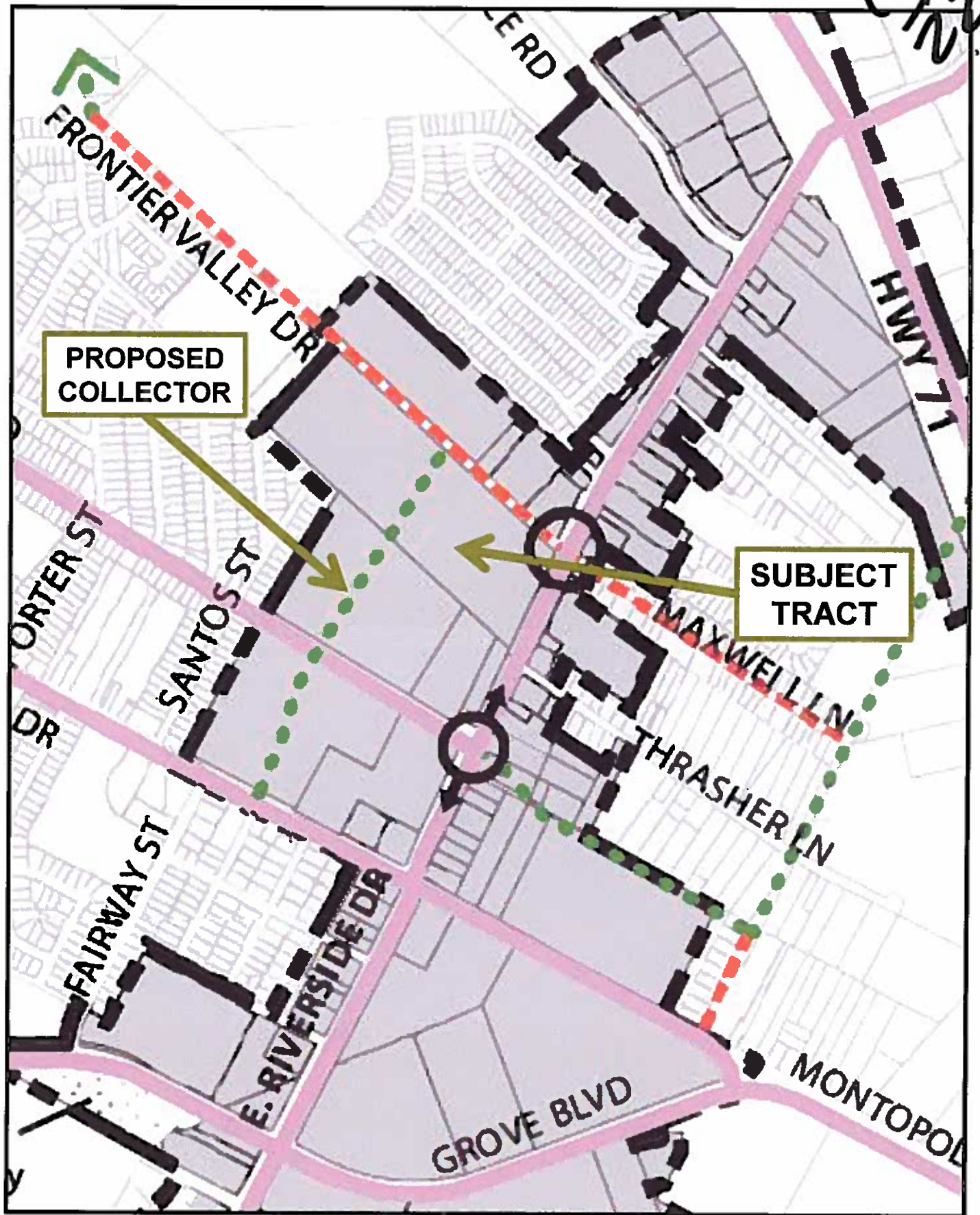


Exhibit C - 2 ERC Regulating Plan, Collector Plan Detail

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Figure 1-3: East Riverside Corridor Roadway Type Map

Indicates the Roadway type for all existing and proposed streets within the ERC boundary.

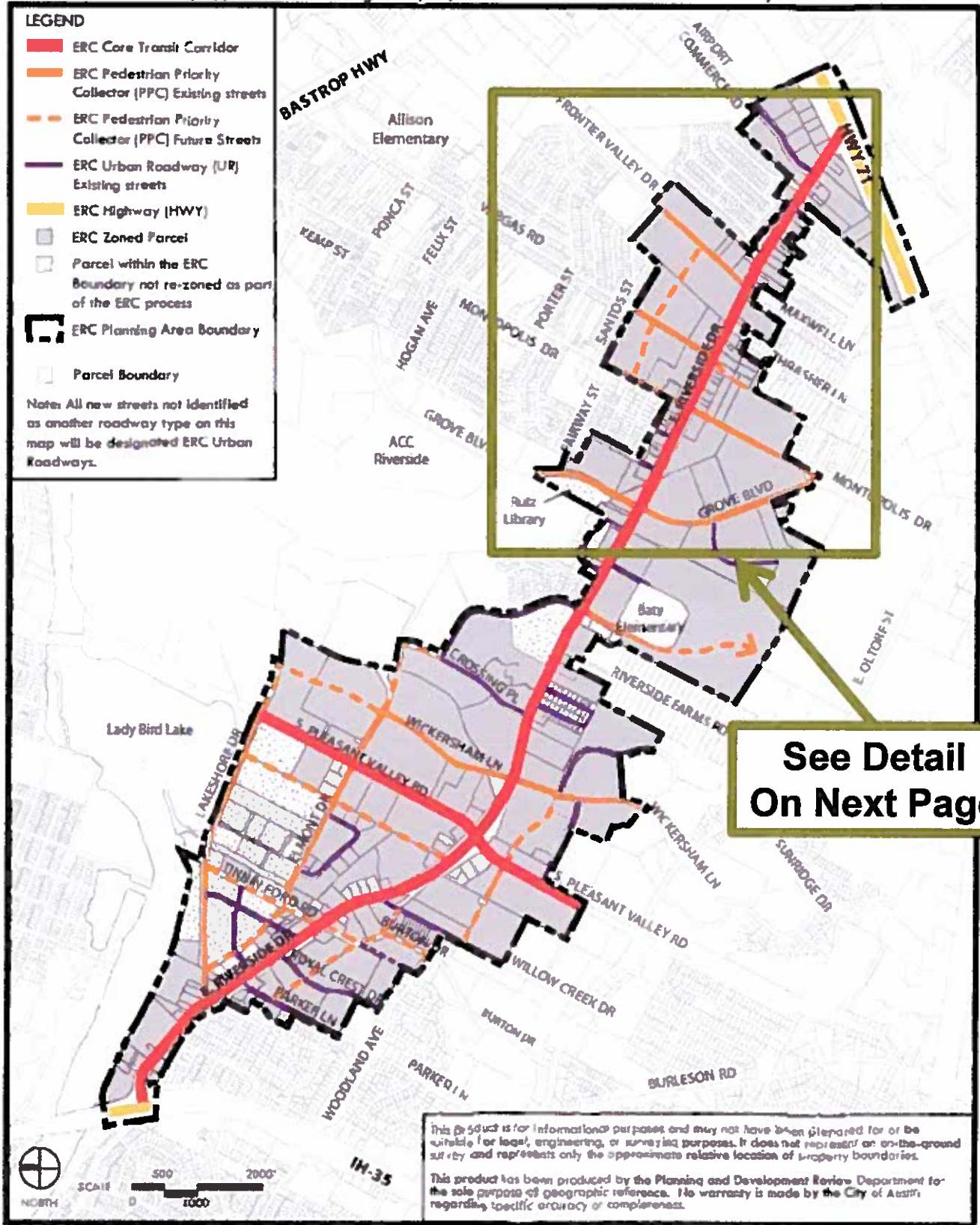


Exhibit C - 3 ERC Regulating Plan, Roadway Type

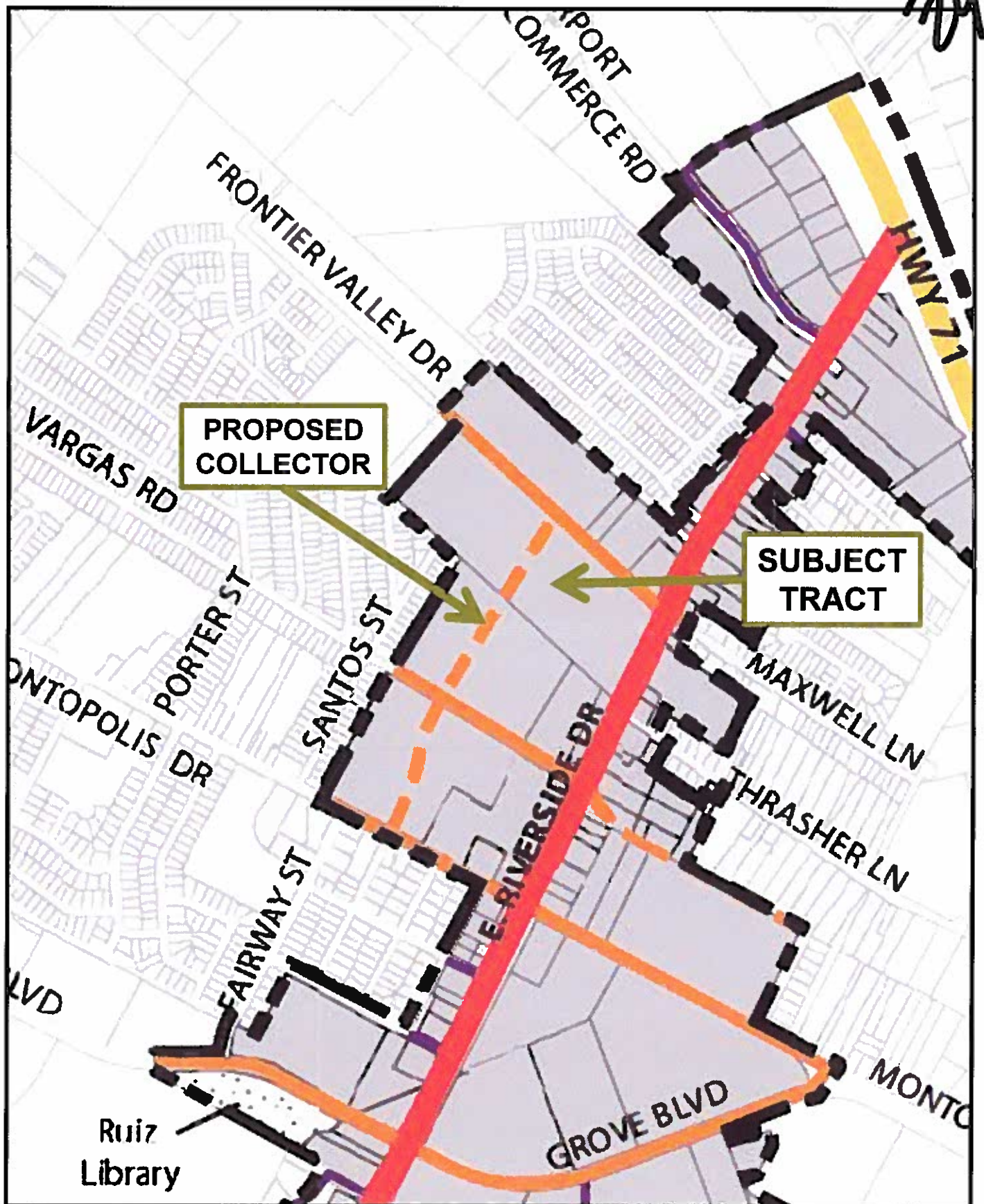


Exhibit C - 4 ERC Regulating Plan, Roadway Type