

**MEMORANDUM**

TO: Mr. Thomas Webber, Chair
Zoning and Platting Commission

FROM: J. Rodney Gonzales, Director 
Development Services Department

DATE: October 4, 2016

SUBJECT: Project Consent Agreement – Marbridge Farms
2636 Bliss Spillar Road and 12501 Hewitt Lane

The Director of Development Services has received a request to consider a Project Consent Agreement (PCA) as authorized under Land Development Code § 25-1-544. A PCA is a voluntary mechanism for determining applicable regulations where the extent of a project's vested development rights are unclear or for incentivizing projects with clearly established vested rights to achieve greater compliance with current regulations. In such cases, a PCA provides a means for the Council to modify development regulations applicable to a project.

The proposed Marbridge Farms PCA involves two properties located at 2636 Bliss Spillar Road and 12501 Hewitt Lane. The PCA would, in summary, relax the watershed development standards required under City Code Chapter 25-8 (Environment) to facilitate development of a commercial use on a 12-acre tract at 12501 Hewitt Lane located in the Desired Development Zone. In exchange, the PCA will condition a significant reduction in development intensity and partial preservation of a 41-acre tract at 2636 Bliss Spillar Road that is located in the Barton Springs Zone and subject to protections of Chapter 25-8, Article 13 (Save Our Springs Initiative).

As provided by 25-1-544, the PCA was considered by the City's Environmental Officer and the recommendation is attached for reference. The PCA was considered by the Environmental Commission on July 20, 2016 and received a favorable recommendation with conditions by a 7-1 vote. A copy of the Environmental Commission Recommendation is attached for reference. As provided under 25-1-544, the Development Services Department has reviewed and considered the proposed PCA recommends approval. For additional information about this PCA, please contact Andrew Linseisen at 512-974-2239.

Attachments

Cc: Charles Lesniak, Environmental Officer – Watershed Protection Department



MEMORANDUM

TO: Rodney Gonzales, Director
Development Services Department

FROM: Chuck Lesniak, Environmental Officer
Watershed Protection Department

DATE: July 13, 2016

SUBJECT: Recommendation on Marbridge Project Consent Agreement

In consultation with Watershed Protection Department and Development Services Department staff I have reviewed the proposed Marbridge Project Consent Agreement (PCA) for the property at 12501 Hewitt Lane (aka Brodie Lane tract). As required by City Code Ch. 25-1-544(D)(3) I am providing you my recommendation regarding the environmental benefits of the proposed Project Consent Agreement.

I understand that the Brodie Lane tract was denied vesting by the City under the City's vesting ordinance, Ch. 25-1 Article 12, and Ch. 245 of the Texas Local Government Code and that determination has been disputed by the applicant, who has now proposed a PCA. If the applicant were to prevail in their request for vesting the development would be entitled to develop under 1984 regulations. These regulations did not include any limits on impervious cover, require water quality treatment, creek buffers, or any of the other modern environmental protection requirements. The property does have a flood plain easement shown on the plat that would significantly limit development in the flood plain.

Proposed PCA

The Marbridge applicant is proposing a PCA that would allow additional commercial development on a property in the Desired Development Zone – the “Brodie Lane Property” – in exchange for reduced development potential on a property over the Barton Springs portion of the Edwards Aquifer Recharge Zone – the “Exchange Tract.” The relative locations are shown in Figure 1. A description of both properties and the proposed terms of the PCA are provided below.

Exchange Tract

The Exchange Tract (Attachment A) is a 41 acre property located on Bliss Spillar Road approximately one-half mile west of FM 1626, in the City's extraterritorial jurisdiction (ETJ) (see Attachment A – Exchange Tract). The site is located in the Bear Creek watershed over the Edwards Aquifer recharge zone, which is classified as the Barton Springs Zone. A tributary to Bear Creek runs through the center of the property from west to east. The creek is classified as a minor waterway and is protected by a critical water quality zone (CWQZ) and water quality transition zone (WQTZ). The northeast corner of the site also contains areas of CWTZ and WQTZ for the main stem of Bear Creek, which is located within City of Austin preserve land adjacent to the property.

The Exchange Tract is currently partially developed with 1.36 acres of impervious cover, consisting of two driveways, a guest house used by families of Marbridge residents, a small animal barn used by 4-H members, and an abandoned barn. Both driveways cross the CWQZ and WQTZ for the tributary to Bear Creek and the 4-H barn is located within the WQTZ for the main stem of Bear Creek. Under current code, the Exchange Tract could be further developed with up to 4.3 acres of impervious cover total or 15 percent of net site area.

As noted above, the property is over the recharge zone and adjacent to the City's Water Quality Protection Land. Staff from the Watershed Protection Department have walked the property and did not find any obvious karst or recharge features on the tract, however, there are known, significant recharge features in Bear Creek just downstream of the property.

Brodie Lane Property

The Brodie Lane Property (Attachment B) is a 12 acre property located at the intersection of Brodie Lane, Hewitt Lane, and FM 1626, in the City's ETJ (see Attachment B – Brodie Lane Property). The site is located in the Bear Creek watershed outside of the Edwards Aquifer recharge zone, which is classified as Suburban. The northern portion of the property contains a tributary to Bear Creek, which is classified as a major waterway and is protected by a CWQZ. The site also contains an area of CWQZ for the main stem of Bear Creek, which is located across FM 1626 to the south of the property.

The Brodie Lane Property is currently undeveloped. Under current code, the maximum impervious cover for a commercial use would be 7.9 acres, or 65 percent of gross site area. However, there are approximately 8.6 acres of CWQZ on the property, which would prevent development of the maximum amount of impervious cover due to the very limited development allowed within the CWQZ. The north and south portions of the site are heavily wooded, and the property contains at least eight heritage trees.

Proposed PCA Terms

The proposed PCA will limit the amount and location of development that can occur on the Exchange Tract in exchange for allowing additional development on the Brodie Lane Property.

On the Exchange Tract:

- Limit impervious cover to a maximum of 2.12 acres, or 7.4 percent of net site area.
- Prohibit any new development on the north portion of the property as shown in the applicant's Exhibit B.
- Remove the existing 4-H barn and interior driveway north of the creek and the area restored with native vegetation
- Install a fence along the southern boundary of the WQTZ.

The driveway along the property's western boundary shall remain, since it is located in an access easement for the adjacent property to the north. The impervious cover limit established by the PCA would enable the property owner to remove the abandoned barn and construct a new guest house and horse barn on the southern portion of the property, as illustrated on the applicant's Exhibit B. With the exception of the impervious cover limit and prohibition on any development on the north portion of the property, any future development on the Exchange Tract would comply with code requirements at the time of application.

On the Brodie Lane Property:

- Limit impervious cover to a maximum of 7.9 acres, the maximum allowed by current code.
- Reduce the CWQZ to approximately 1.7 acres as shown in the applicant's Exhibit D.

- Allow two CWQZ crossings; one from Hewitt Lane in the northwest corner of the property, and one additional crossing in the interior of the site.
- Allow water quality and detention ponds within the CWQZ.
- Allow additional development within the drainage easement for the 100-year floodplain, as shown in the applicant's Exhibit D.
- Allow the applicant to request an administrative variance for up to ten feet of cut and fill, instead of a maximum of eight feet as allowed by code.
- Require protection of four heritage trees as shown in the applicant's Exhibit F.
- Require water quality controls in compliance with code requirements at the time of application.

Analysis

The proposed PCA will provide additional protection for the environmentally sensitive Exchange Tract, while waiving some current code requirements to enable additional development on the Brodie Lane Property. However, the proposed PCA does provide more environmental protections on the Brodie Lane Property than would be required for a vested project should the applicant prevail in their Ch. 245 claim. From an environmental standpoint, it is my opinion that impervious cover, water quality treatment, creek buffers, and tree protection are the key environmental issues of concern for these properties. A comparison of the potential vested code requirements, current code requirements, and proposed PCA terms for the Exchange Tract and the Brodie Lane Property is shown in Table 1.

Table 1

| | Residential Project Based on 1984 code | Current Code Requirement | Proposed |
|-----------------------------|--|--|---|
| Brodie Lane Property | | | |
| Impervious Cover Limit | None | 65% gross site area | 65% gross site area |
| Water Quality Treatment | None | ½”-plus sedimentation/ filtration standard | ½”-plus sedimentation/ filtration standard |
| Creek Buffer | None | 8.6 acres CWQZ (300’ from centerline) | 1.7 acres CWQZ (width varies) |
| Cut and Fill Limit | None | Administrative variance for 4-8’; must be at least 100’ from classified waterway | Administrative variance for 4-10’; must be outside of the proposed CWQZ |
| Tree Protection | None | None (ETJ) | Protects 4 heritage trees |
| Exchange Tract | | | |
| Impervious Cover Limit | <i>n/a</i> | 15% net site area (4.3 acres) | 7.4% net site area (2.12 acres) |
| Water Quality Treatment | <i>n/a</i> | SOS non-degradation standard | SOS non-degradation standard |
| Creek Buffer | <i>n/a</i> | Minor: 50-100’ CQWZ, 100’ WQTZ Major: 300’ WQTZ | Minor: 50-100’ CQWZ, 100’ WQTZ Major: 300’ WQTZ Additional buffer provided by removing existing development and prohibiting future development on the northern portion of the property, adjacent to creek buffers |
| Cut and Fill Limit | <i>n/a</i> | 4’ | 4’ |
| Tree Protection | <i>n/a</i> | None (ETJ) | None (ETJ) |

Recommendation

The removal of existing development and limitation of future development provides substantial environmental benefit to the Exchange Tract, which is located over the environmentally sensitive Edwards Aquifer Recharge Zone. In my opinion, this sufficiently offsets the additional development entitlements on the Brodie Lane Property and I recommend submitting the PCA to Council for consideration.

Cc: Andy Linseisen, P.E., Development Services Department
 Susan Scallon, Development Services Department
 Brent Lloyd, Law Department

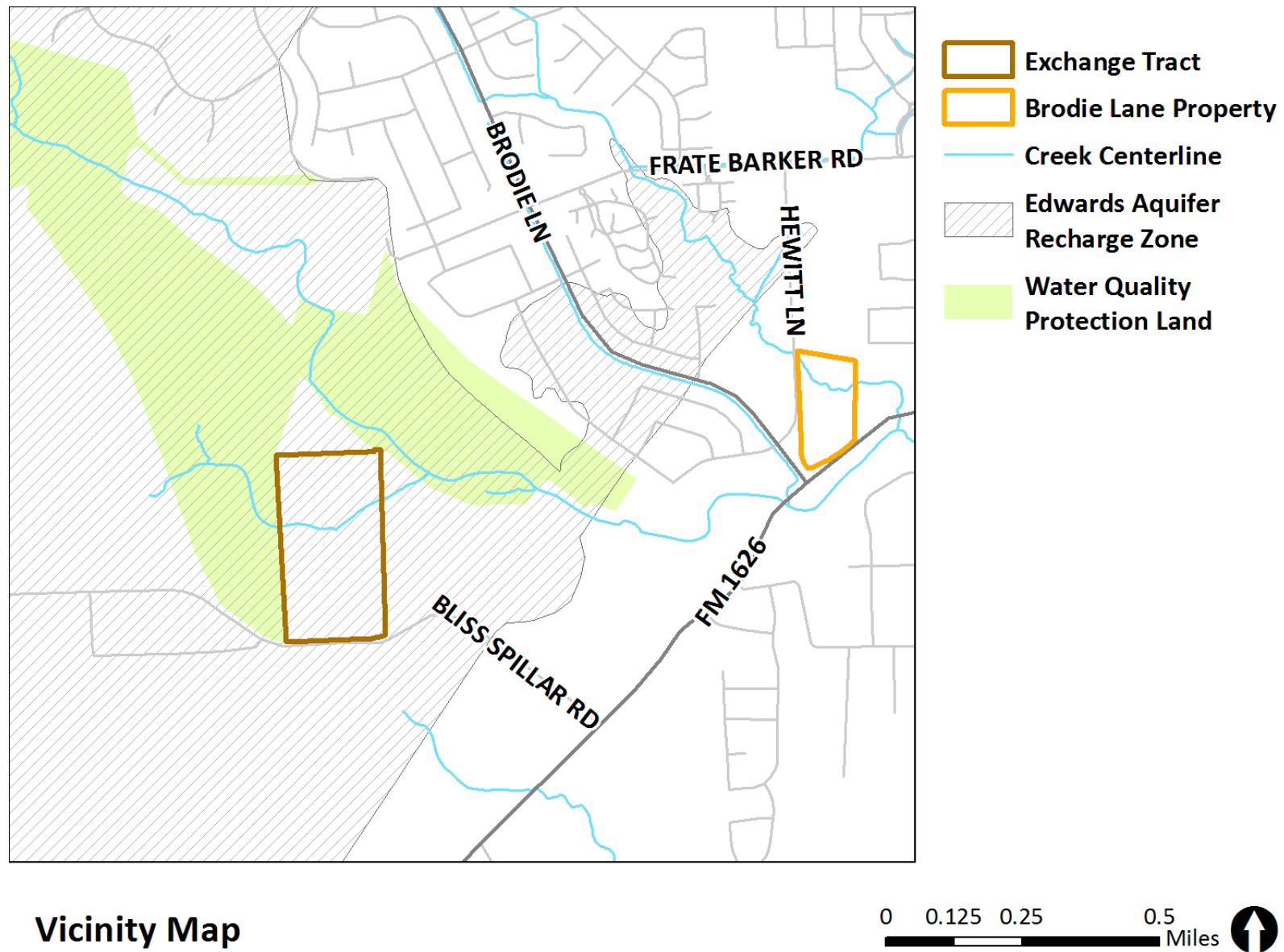
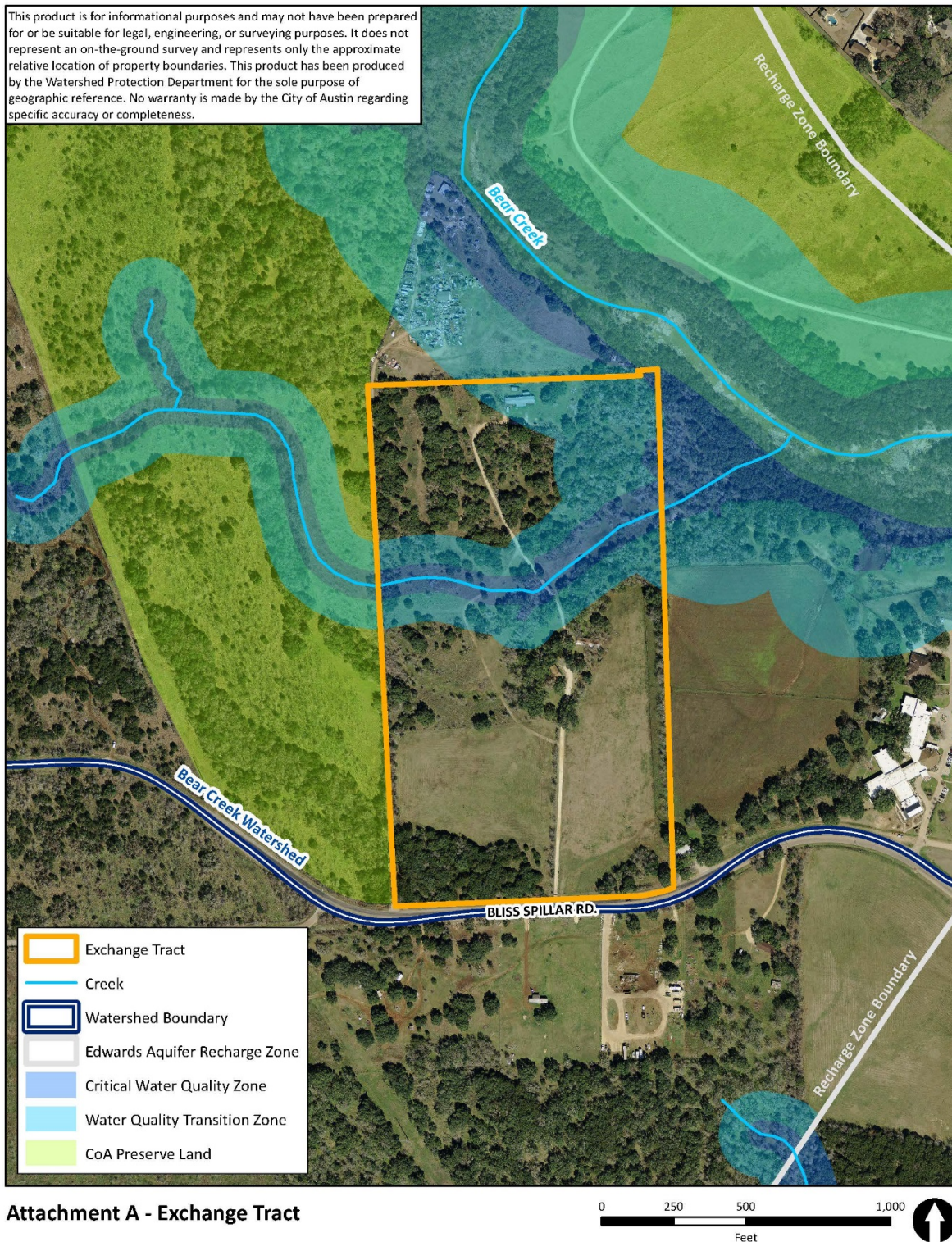
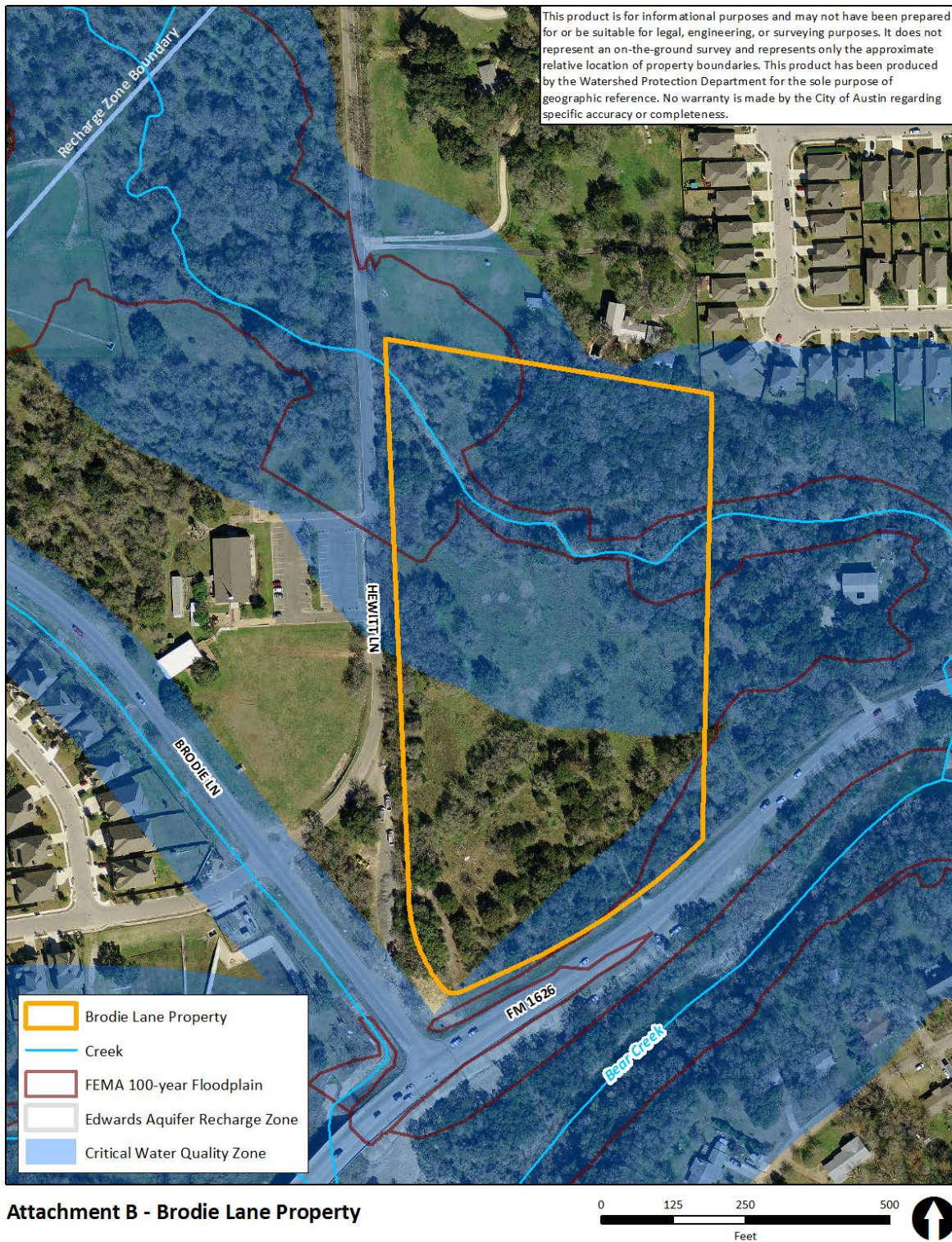


Figure 1: Location map





Marbridge Project Consent Agreement

Chuck Lesniak, Environmental Officer
Watershed Protection Department



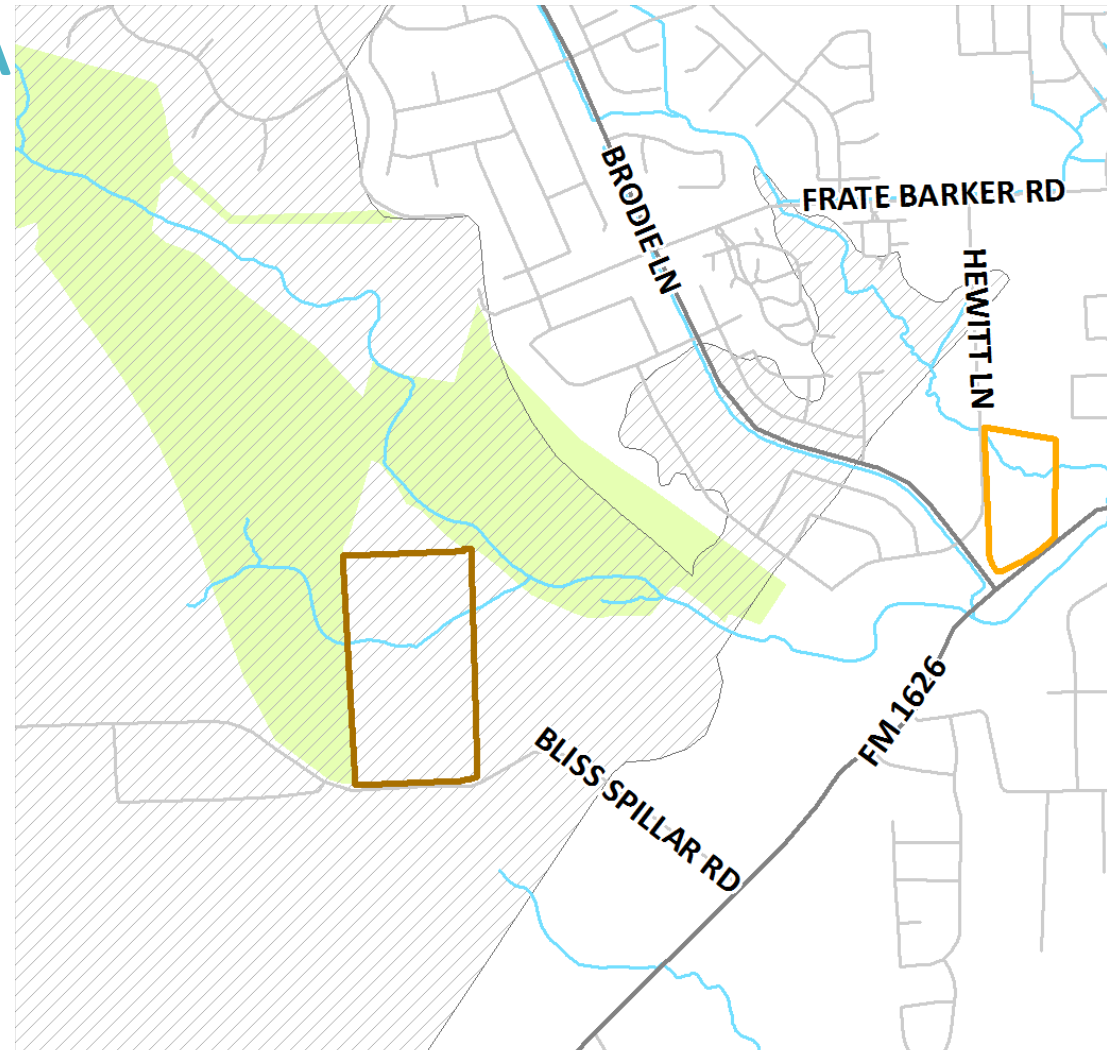
What is a Project Consent Agreement?

- Authorized by City Code Section 25-1-544 as part of the City's vested rights ordinance:
 - (A) This section provides a voluntary mechanism for determining applicable regulations where the extent of a project's **vested rights are unclear** and for **incentivizing projects with clearly established vested rights** to achieve greater compliance with current regulations.*
- Can be initiated by the Director of Development Services or by City Council
- Requires a recommendation from the Environmental Officer
- Must go before the Environmental Commission and the Land Use Commission for consideration of a recommendation to Council

Marbridge PCA

Proposed to facilitate development of a grocery store at Brodie Lane and FM 1626

- Requests reduction in Critical Water Quality Zone to allow max impervious cover
- Offers to reduce development and provide additional environmental protection on property over Edwards Aquifer Recharge Zone



- Exchange Tract
- Brodie Lane Property
- Creek Centerline
- Edwards Aquifer Recharge Zone
- Water Quality Protection Land

Vicinity Map






PCA Details

Brodie Lane Property

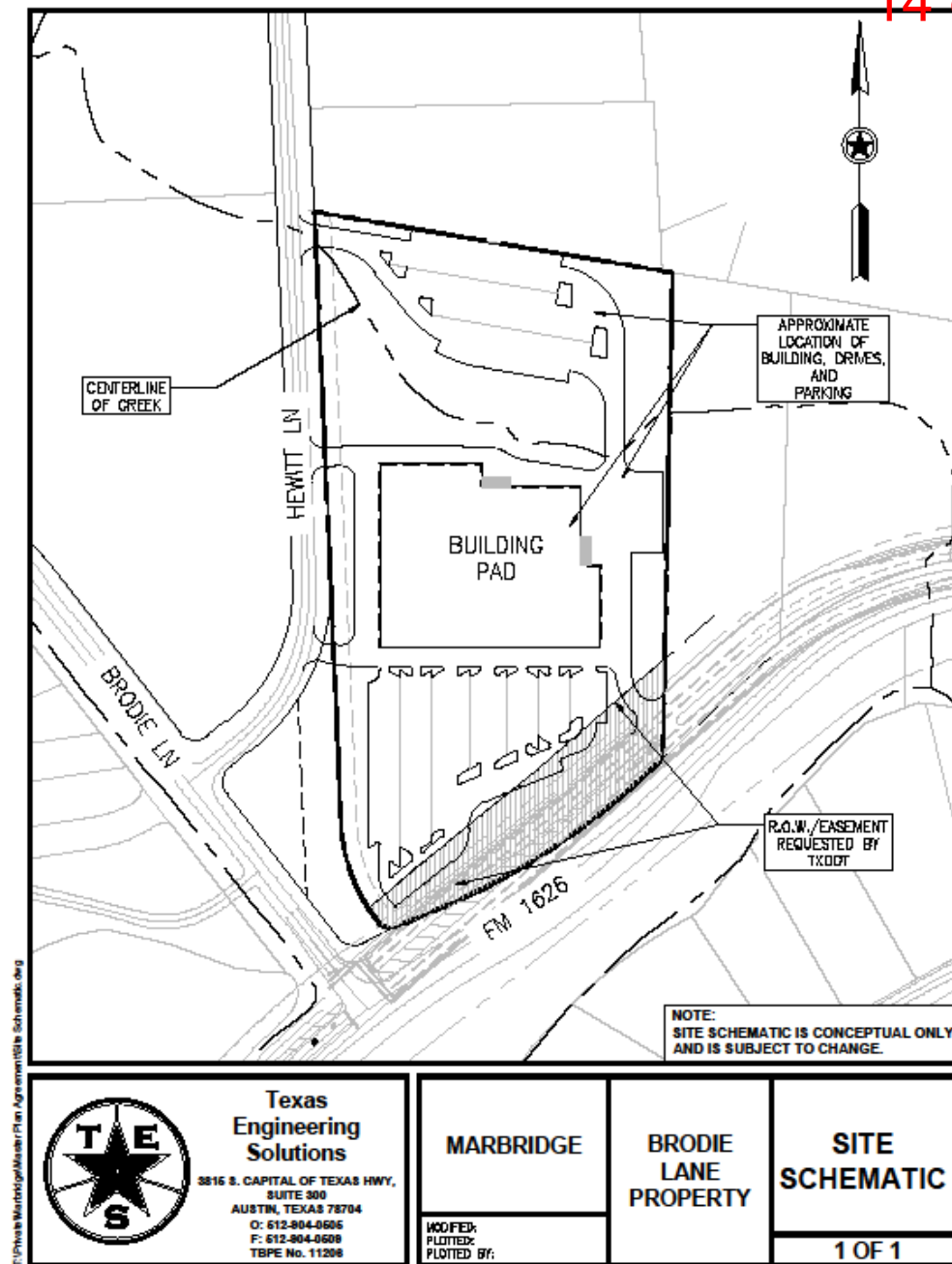
- Limit impervious cover to 7.9 ac.
- Reduce CWQZ to approximately 1.7 ac.
- Allow two CWQZ crossings; 1 from Hewitt Lane in the NW corner of the property, and 1 crossing in the interior of the site
- Allow water quality and detention ponds within the CWQZ
- Allow additional development within the drainage easement for the 100-year floodplain
- Allow an administrative variance for up to 10 feet of cut/fill
- Require protection of four heritage trees on SW corner of property
- Require water quality controls in compliance with code requirements at the time of application



-  Brodie Lane Property
-  Creek
-  FEMA 100-year Floodplain
-  Critical Water Quality Zone

Brodie Lane Property

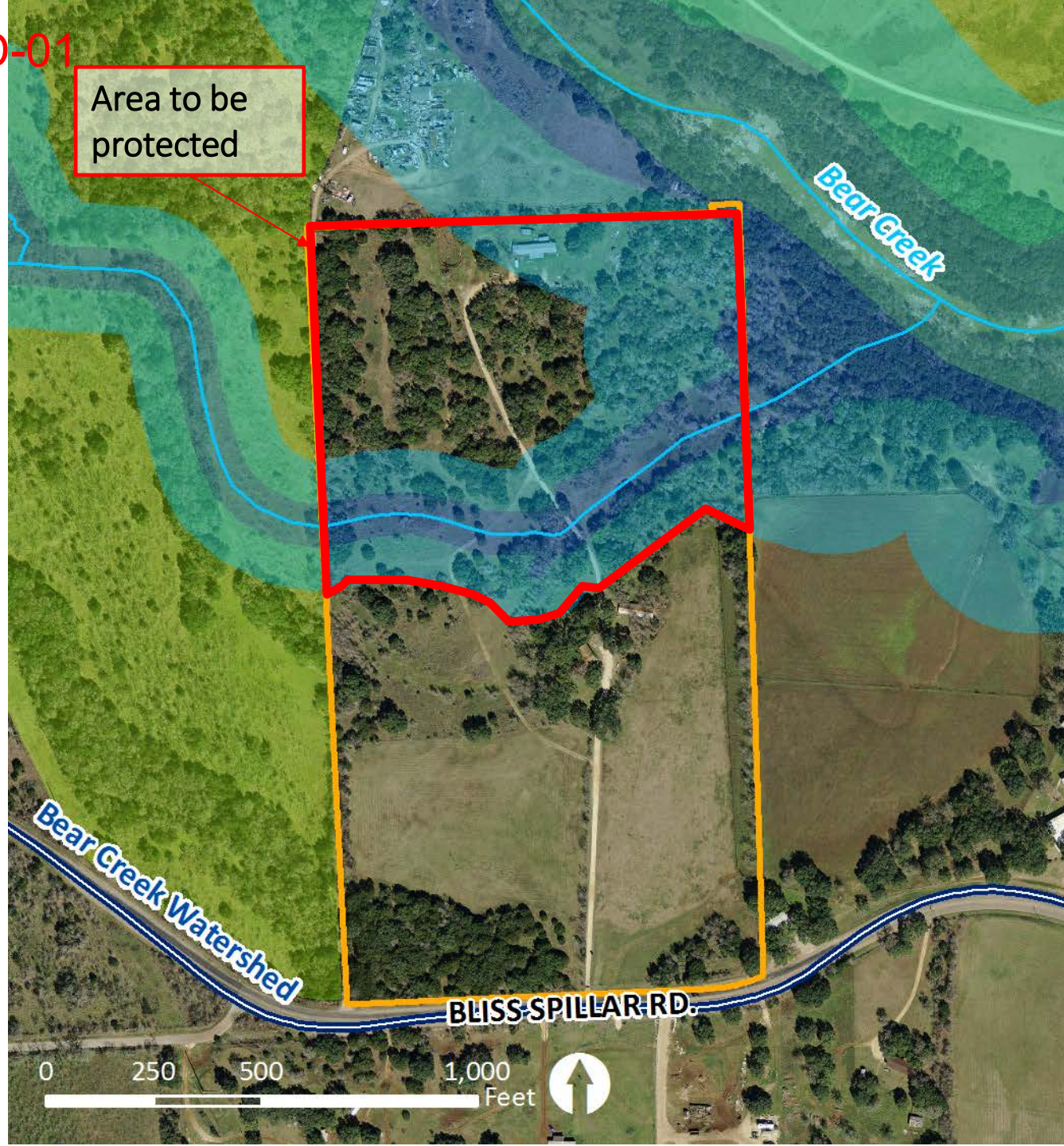
Brodie Lane Conceptual Plan



PCA Details

Exchange Tract

- Limit impervious cover to a maximum of 2.12 acres or 7.4 percent of net site area
- Remove the existing 4-H barn and interior driveway north of the creek and restore the area with native vegetation
- Prohibit any new development on the north portion of the property near Bear Creek upstream of in-stream recharge features
- Install a fence along the southern boundary of the WQTZ



- Exchange Tract
- Creek
- Watershed Boundary
- Critical Water Quality Zone
- Water Quality Transition Zone
- CoA Preserve Land

Exchange Tract

Recommendation

Staff recommends approval based on:

Benefits to environmentally sensitive Exchange Tract

- Limiting impervious cover
- Removal of existing development and restoration of those areas near Bear Creek
- Prohibiting development in developable areas near creek buffers upstream of recharge features within Bear Creek

Characteristics of Brodie Lane Property

- Protection of several heritage trees on the Brodie Lane tract
- Brodie Lane property is in the Desired Development Zone, is surrounded by more heavily developed areas and is adjacent to two major roads

Questions?



ENVIRONMENTAL COMMISSION MOTION FORM 20160720 008d

Date: July 20, 2016

Subject: Project Consent Agreement for property located at 12501 Hewitt Lane

Motion by: Richard Grayum

Seconded by: Andrew Creel

RATIONALE:

Whereas, the applicant is offering to reduce development on land over the Edwards Aquifer Recharge Zone in exchange for developing land over the desired development zone in accordance with a previous ordinance in effect at the time of final planning; and

Whereas, staff agrees that the removal of existing development and limitation of future development provides a greater deal of environmental protection and this offsets the additional development entitlements on the Brodie Lane Property.

Therefore, Environmental Commission recommends support for the project consent agreement at 12501 Hewitt Lane with the following conditions:

Staff Conditions:

- On the exchange tract impervious cover is limited to 2.12 acres, new development is prohibited on the north portion of the property as shown on applicants exhibit "B", applicant will remove the existing 4H barn and interior driveway north of the creek and restore the area, and install a fence along the southern boundary of the Water Quality Treatment Zone, and
- On the Brodie Lane Tract limit impervious cover to 7.9 acres allowed by current code, reduce the Critical Water Quality Zone to approximately 1.7 acres as shown on applicants exhibit "D", allow 2 Critical Water Quality Zone crossings, allow water quality and detention ponds in the Critical Water Quality Zone, allow additional development within the drainage easement, allow the applicant to request an administrative variance up to 10' for cut and fill, require protection of 4 heritage trees as shown in the applicants exhibit "F" and require water quality controls in accordance with code requirements at the time of application.

Environmental Commission Conditions:

- Legal document required, such as a restrictive covenant and conservation easement, for the exchange tract.

VOTE 7-1-1-1

For: Neely, Thompson, Maceo, Guerrero, Grayum, Creel, B. Smith
Against: Perales
Abstain: None
Recuse: H. Smith
Absent: Moya

Approved By:

A handwritten signature in black ink, appearing to read "Marisa Perales", is written over a light gray rectangular background.

Marisa Perales, Environmental Commission Chair