

46

**ZONING CHANGE REVIEW SHEET**

**CASE:** C14-01-0009

**P.C. DATE:** February 6, 2001  
February 27, 2001

**ADDRESS:** 1800 Evergreen Avenue

**OWNER/APPLICANT:** Richard de Vargas and K. Margiotta

**AGENT:** Mallet de Vargas (Richard de Vargas)

**ZONING FROM:** SF-3

**TO:** CS-MU

**AREA:** .754 acres

**SUMMARY STAFF RECOMMENDATION:**

Staff recommends CS-MU-CO, General Commercial Services-Mixed Use Combining District-Conditional Overlay, district zoning for the subject tract. The conditional overlay prohibits all CS uses except Art and Craft Studio (General) and Personal Improvement Services, permits LR, Neighborhood Commercial, uses, and limits the site to uses that generate no more than 2,000 vehicle trips per day.

**PLANNING COMMISSION RECOMMENDATION:**

*February 6, 2001:* Postponed to 2/27/01. Planning Commission requested that staff conduct a tree survey prior to further consideration. Vote: 8-0 (LO-off dais)

*February 27, 2001:* Recommended staff's recommendation of CS-MU-CO. The conditional overlay prohibits all CS uses except Art and Craft Studio (General) and Personal Improvement Services, permits LR, Neighborhood Commercial, uses, and limits the site to uses that generate no more than 2,000 vehicle trips per day. Vote 8-0, (consent), (SG-absent).

**DEPARTMENT COMMENTS:**

Staff conducted a tree survey per Planning Commission's request and identified three (3) pecan trees and two (2) American elm trees in good condition ranging from 19" - 24" caliper inches located on the perimeter of the subject tract (see attached). The rest of the smaller trees on the site are hackberry trees.

Staff has discussed with the applicant the Planning Commission's concern with the subject tract having inadequate parking space for the proposed mixed-use of offices and residential units. Staff is unable to determine at this time whether there is adequate space for parking without a site plan to review. With this said, a shared parking agreement may be possible, thus reducing the number of required parking spaces, since the proposed use is conducive to greater internal capture of vehicle trips than a typical development which is exclusively commercial.

Attached is a letter of support for the requested zoning from the Zilker Neighborhood Association.

The applicant agrees with staff's recommendation.

**EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	SF-3	Undeveloped
<i>North</i>	CS	Automotive repair
<i>South</i>	CS	Offices, apartments
<i>East</i>	MF-3-H	Historic residential building
	CS	Single-family residences
<i>West</i>	CS	Automotive repair

**AREA STUDY:** N/A**TIA:** N/A**WATERSHED:** West Bouldin**DESIRED DEVELOPMENT ZONE:** Yes**CAPITOL VIEW CORRIDOR:**N/A**HILL COUNTRY ROADWAY:** N/A**NEIGHBORHOOD ORGANIZATIONS:**

#107 Zilker Neighborhood Association  
 #127 Bouldin Creek Neighborhood Association  
 #300 Terrell Lane Interceptor Association  
 #428 Barton Springs/Edwards Aquifer Conservation District  
 #498 South Central Coalition  
 #943 Save Our Springs Alliance

**CASE HISTORIES:**

<b>NUMBER</b>	<b>REQUEST</b>	<b>PLANNING COMMISSION</b>	<b>CITY COUNCIL</b>
C14-00-2172	SF-3 to CS	Recommend CS-CO. The CO permits custom manufacturing and all other LR uses.	Approved as recommended by Planning Commission.

**ABUTTING STREETS:**

<b>STREET</b>	<b>RIGHT-OF-WAY</b>	<b>PAVEMENT WIDTH</b>	<b>CLASSIFICATION</b>	<b>DAILY TRAFFIC</b>
West Mary Street	60'	37'	Collector	7550
Evergreen Avenue	50'	27'	Residential	400

**CITY COUNCIL DATE:** March 29, 2001**ACTION:****ORDINANCE READINGS:** 1<sup>st</sup>2<sup>nd</sup>3<sup>rd</sup>**ORDINANCE NUMBER:****CASE MANAGER:** Adam Smith**PHONE:** 499-2755





SUBJECT TRACT  
PENDING CASE  
ZONING BOUNDARY  
CASE MGR: D.PERRYMAN

**ZONING**

CASE #: C14-01-0009  
ADDRESS: 1800 EVERGREEN AVE  
SUBJECT AREA (acres): 0.754

DATE: 01-02  
INTLS: BAR

CITY GRID  
REFERENCE  
NUMBER  
H20

## STAFF RECOMMENDATION

Staff recommends CS-MU-CO, General Commercial Services-Mixed Use Combining District-Conditional Overlay, district zoning for the subject tract. The conditional overlay prohibits all CS uses except Art and Craft Studio (General) and Personal Improvement Services, permits LR, Neighborhood Commercial, uses, and limits the site to uses that generate no more than 2,000 vehicle trips per day.

## BASIS FOR RECOMMENDATION

1. CS, General Commercial Services, is intended for commercial or industrial activities which typically have operating characteristics or traffic service requirements generally incompatible with residential environments such as equipment sales, custom manufacturing, vehicle storage, or construction services.
2. MU, Mixed Use Combining District, is to allow office, retail, commercial, and residential uses to be combined in a single development.
3. CS district zoning is compatible with the zoning in the surrounding area.
4. The MU combining district will allow residential uses which is compatible with land uses to the south and east of the subject tract.
5. The recommended conditional overlay prohibits the more obnoxious uses permitted in CS that are incompatible with the single-family residences to the east.

## EXISTING CONDITIONS

### Site Characteristics

The undeveloped subject tract is relatively flat.

### Impervious Cover

The maximum impervious cover allowed by the CS zoning district would be 95%. The impervious cover is not limited by the watershed regulations.

### Environmental

The site is not located over the Edwards Aquifer Recharge Zone. The site is located in the West Bouldin Creek Watershed of the Colorado River Basin, which is classified as an Urban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone. Impervious cover is not limited in this watershed class. This site is required to provide on-site structural water quality controls (or payment in lieu of) for all development and/or redevelopment when 5,000 s.f. cumulative is exceeded, and detention for the two-year storm.

According to flood plain maps, there is no flood plain within the project area.

At this time, site-specific information is unavailable regarding existing trees and other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.



At this time, no information has been provided as to whether this property has any pre-existing approvals which would preempt current water quality or Code requirements.

#### **Transportation**

No additional right-of-way is needed.

A traffic impact analysis was waived for this case because the applicant agreed to limit the intensity and uses for this development. If the zoning is granted, development should be limited through a conditional overlay to less than 2,000 vehicle trips per day. [LDC, 25-6-117]

#### **Water and Wastewater**

The landowner intends to serve the tract with City of Austin water and wastewater utility service. If water or wastewater utility improvements are required, the landowner will be responsible for all cost and for providing the utility improvements.

#### **Stormwater Detention**

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

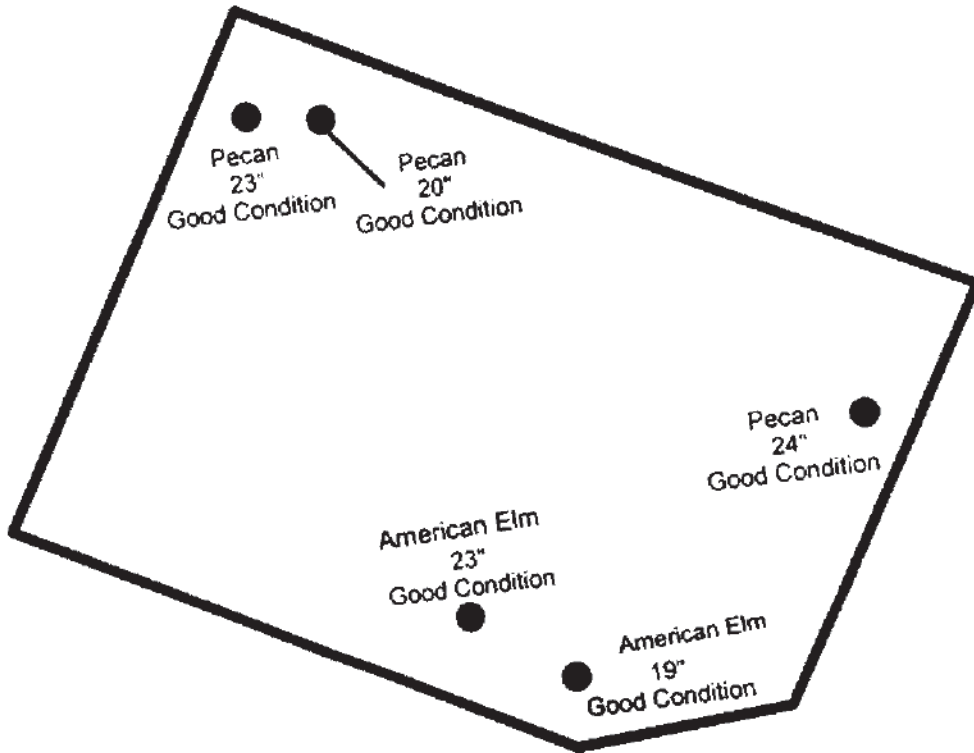
#### **Compatibility Standards**

The site is subject to compatibility standards. Along the south and east property line, the following standards apply:

- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- Additional design regulations will be enforced at the time a site plan is submitted.

Lamar Blvd.

Evergreen St.



West Mary St.



## **Zilker Neighborhood Association**

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♦ P. O. Box 33546 ♦ Austin, Texas 78764 ♦ (512) 447-5877♦

January 11, 2001

Mr. Richard Varga  
707-B Johanna  
Austin, TX 78704

Dear Mr. Varga,

The Executive Committee of the Zilker Neighborhood Association supports the proposed change of zoning at 1800 Evergreen Avenue to CS-MU (Commercial Services, mixed use) to match the zoning of surrounding properties and to accommodate a mix of arts studios, professional services, and residential use.

Faithfully yours,



Lorraine Atherton  
vice president, ZNA

### **Zilker Neighborhood Association Executive Officers**

**President Jeff Jack ♦ Vice President Kate Trybus ♦ Vice President Lorraine Atherton ♦ Co-Secretaries Steve Sides & Mary Ann Sides  
Treasurer Fontaine Marwick ♦ Austin Neighborhoods Council Representative Laura Albrecht ♦ Z-News Editor Barbara Cossie**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 1800 EVERGREEN AVENUE FROM FAMILY RESIDENCE (SF-3) DISTRICT TO GENERAL COMMERCIAL SERVICES-MIXED USE-CONDITIONAL OVERLAY (CS-MU-CO) COMBINING DISTRICT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The zoning map established by Section 25-2-191 of the City Code is amended to change the base district from family residence (SF-3) district to general commercial services-mixed use-conditional overlay (CS-MU-CO) combining district on the property described in File C14-01-0009, as follows:

A 0.754 acre tract of land, more or less, out of Lot 14, Evergreen Heights Subdivision, the tract of land being more particularly described by metes and bounds in Exhibit "A" incorporated into this ordinance, (the "Property")

locally known as 1800 Evergreen Avenue, in the City of Austin, Travis County, Texas, and generally identified in the map attached as Exhibit "B".

**PART 2.** The Property within the boundaries of the conditional overlay combining district established by this ordinance is subject to the following conditions:

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generate traffic that exceeds 2,000 trips per day.

2. The following uses of the Property are prohibited:

Agricultural sales and service	Funeral services
Art and craft studio (industrial)	General retail sales (general)
Automotive rental	Hotel-motel
Automotive repair services	Indoor entertainment
Automotive sales	Indoor sports and recreation
Automotive washing (of any type)	Kennels
Building maintenance services	Laundry services
Business or trade schools	Limited warehousing and distribution



Business support services	Maintenance and service facilities
Commercial blood plasma center	Monument retail sales
Campground	Outdoor entertainment
Club or lodge	Outdoor sports and recreation
Commercial off-street parking	Research services
Communication services	Restaurant (general)
Construction sales and service	Theater
Convenience storage	Transitional housing
Drop-off recycling collection facility	Transportation terminal
Electronic prototype assembly	Vehicle storage
Equipment repair services	Veterinary services
Equipment sales	Exterminating services

Except as specifically restricted under this ordinance, the Property may be developed and used in accordance with the regulations established for the general commercial services (CS) base district and other applicable requirements of the City Code.

**PART 3.** The Council waives the requirements of Section 2-2-3, 2-2-5, and 2-2-7 of the City Code for this ordinance.

**PART 4.** This ordinance takes effect on \_\_\_\_\_, 2001.

# **PASSED AND APPROVED**

_____	§	_____
_____	§	_____
_____, 2001	§	_____
		Kirk Watson
		Mayor

<b>APPROVED:</b> _____	<b>ATTEST:</b> _____
Andrew Martin	Shirley A. Brown
City Attorney	City Clerk

## FIELD NOTES

Being 0.754 acre out of the southeast corner of Lot 14, Evergreen Heights, a subdivision in Travis County, Texas, according to the map or plat recorded in Volume 2, Page 614, Deed Records, Travis County, Texas, the same tract described as Tract 1, in a deed to Stuart C. Shelton, recorded in Volume 10777, Page 471, Real Property Records, Travis County, Texas, as shown on accompanying survey plat and being more particularly described as follows:

BEGINNING at a 3/8" iron pipe found in the west line of Evergreen Avenue (R.O.W. varies), for the northeast corner of this tract.

THENCE, N 60°00'00" W, said course being the bearing base for this survey, passing at 2.64', a 1/2" iron pin found at the southeast corner of a tract described in a deed to J. Vaughan, recorded in Volume 12059, Page 2693, Real Property Records, Travis County, Texas, in all, 209.88', to a 1/2" iron pin found at the northeast corner of a triangular parcel described in Volume 1822, Page 493, Deed Records, Travis County, Texas, for the northwest corner of this tract.

THENCE, with the east line of said triangular parcel and the west line of this tract, S 50°23'20" W, 32.12', to a 1/2" iron pin found at the most southerly corner of said triangular parcel, for an angle point in the west line of this tract.

THENCE, with the east line of a tract described in a deed to S. I. Hardin, recorded in Volume 13060, Page 2333, Real Property Records, Travis County, Texas, the east line of a tract described in a deed to M. Natinsky, recorded in Volume 13053, Page 1, Real Property Records, Travis County, Texas, and the west line of this tract, S 30°00'00" W, 124.89', to a 1/2" iron pin set in the north line of Fredericksburg Road Acres, No. 2, a subdivision in Travis County, Texas, recorded in Volume 465, Page 202, Deed Records, Travis County, Texas, at the southeast corner of said Natinsky tract, for the southwest corner of this tract.

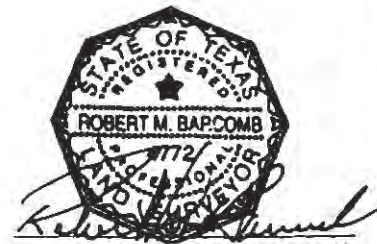
THENCE, with the north line of said subdivision and the south line of this tract, S 60°00'00" E, 168.10', to a 1/2" iron pin set in the north line of W. Mary Street (60' R.O.W.), for an angle point in the south line of this tract.

THENCE, with the north line of W. Mary Street and the south line of this tract, N 79°40'00" E, 68.00', to a 1/2" iron pin set in the west line of Evergreen Avenue, for the southeast corner of this tract.

THENCE, with the west line of Evergreen Avenue and the east line of this tract, N 30°35'00" E, 110.99', to the PLACE OF BEGINNING and containing 0.754 acre of land, more or less.

Prepared from a survey made on the ground July 26, 2000, by:  
Arpentours Professional Surveying  
8906 Wall Street, Suite 302  
Austin, Texas 78734  
(512) 832-1232

EXHIBIT A







N  
 SUBJECT TRACT  
 PENDING CASE  
 ZONING BOUNDARY  
 CASE MGR: D.PERRYMAN  
 400'

CASE #: C14-01-0009  
 ADDRESS: 1800 EVERGREEN AVE  
 SUBJECT AREA (acres): 0.754

ZONING EXHIBIT B

DATE: 01-02  
 INTL C. RAR

CITY GRID  
 REFERENCE  
 NUMBER  
 H20



**ORDINANCE NO. 010329-46****AN ORDINANCE REZONING AND CHANGING THE ZONING MAP FOR THE PROPERTY LOCATED AT 1800 EVERGREEN AVENUE FROM FAMILY RESIDENCE (SF-3) DISTRICT TO GENERAL COMMERCIAL SERVICES-MIXED USE-CONDITIONAL OVERLAY (CS-MU-CO) COMBINING DISTRICT.****BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

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Kennels  
Laundry services  
Limited warehousing and distribution




- Maintenance and service facilities
- Monument retail sales
- Outdoor entertainment
- Outdoor sports and recreation
- Research services
- Restaurant (general)
- Theater
- Transitional housing
- Transportation terminal
- Vehicle storage
- Veterinary services
- Exterminating services

**PART 3.** The Council waives the requirements of Section 2-2-3, 2-2-5, and 2-2-7 of the City Code for this ordinance.

**PASSED AND APPROVED**

March 29, 2001

  
Kirk Watson  
Mayor

**APPROVED:** Andrew Martin  
Andrew Martin  
City Attorney

ATTEST: Shirley A. Brown  
Shirley A. Brown  
City Clerk

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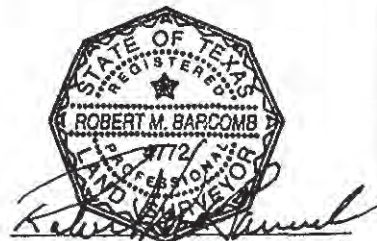
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Prepared from a survey made on the ground July 26, 2000, by:  
Arpenteurs Professional Surveying  
8906 Wall Street, Suite 302  
Austin, Texas 78754  
(512) 832-1232

EXHIBIT A







 1"=400'	SUBJECT TRACT		<b>ZONING EXHIBIT B</b>	CITY GRID REFERENCE NUMBER H20
	PENDING CASE			
	ZONING BOUNDARY			
	CASE MGR: D.PERRYMAN			
CASE #: C14-01-0009				
ADDRESS: 1800 EVERGREEN AVE		DATE: 01-02		
SUBJECT AREA (acres): 0.754		INTLS: BAR		



1710 Evergreen Ave.

1710 EVERGREEN AVENUE

AUSTIN, TEXAS

OWNER

MITCH WHIDDON  
1211 GARNER V.  
AUSTIN, TEXAS 78704  
(512) 5763736

WEST BOULDIN CREEK WATERSHED  
URBAN WATERSHED

INDEX OF DRAWINGS

- 1. COVER SHEET
- 2. SITE AND IMPERVIOUS COVER PLAN
- 3. GRADING, DRAINAGE AND WATER QUALITY CONTROL PLAN
- 4. EROSION, SEDIMENTATION AND TREE PROTECTION PLAN
- 5. UTILITY PLAN
- 6. GENERAL NOTES AND DETAILS
- 7. LANDSCAPE PLAN
- 8. BUILDING ELEVATIONS

ENGINEER

LOC CONSULTANTS  
1000 E. CESAR CHAVEZ ST., STE. 100  
AUSTIN, TEXAS 78702  
(512) 499-0908

WATERSHED STATUS – THIS PROJECT IS LOCATED IN THE WEST BOULDIN CREEK WATERSHED, IS CLASSIFIED AS URBAN.

THIS SITE IS NOT OVER THE EDWARD’S AQUIFER RECHARGE ZONE.

NO PORTION OF THE SITE LIES WITHIN THE 100 YEAR FLOOD PLAIN, ACCORDING TO THE FLOOD INSURANCE RATE MAP, PANEL NO. 48453C0210E, DATED JUNE 16, 1993 FOR TRAVIS COUNTY, TEXAS.  
THERE ARE NO CRITICAL ENVIRONMENTAL FEATURES WITHIN 150 FEET OF THE SITE.

REVISIONS/CORRECTIONS

NO.	DESCRIPTION	REVISE(R) VOID(V)/ADD(A) SHEET NO.'S	TOTAL # SHEETS IN PLAN	NET CHANGE IMP. COVER	SITE IMPERV. COVER	% SITE IMPERV. COVER	CITY OF AUSTIN APPROVAL DATE	DATE IMAGED
1A	Extend sidewalk, delete ramp, change bldg area	1-7	8	1%	7964sf	73.73%	10/13/05	
2A	Increase WM size, decrease RFF size	1, 5	8	0%	7964sf	73.73%	10/14/05	
3C	Addition of Accessory Dwelling Unit	1, 2	8	0%	7964sf	73.73%	11/1/07	
4C	Addition of Office Warehouse	1, 2	8	0%	7964sf	73.73%	3/16/07	
5C	CHANGE OF USE WAREHOUSE TO FOOD PROCESSING	1, 2	8	0%	7964sf	73.73%	7/25/07	

LANDSCAPE ARCHITECT

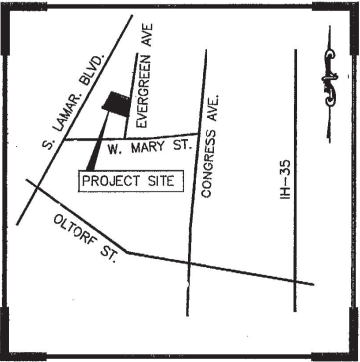
DAVID HOLT  
1715 Capital of Texas HWY S. Suite 207  
AUSTIN, TEXAS 78749  
(512) 327 4660

THE PROJECT COMPLIES WITH WATERSHED PROTECTION REGULATIONS AS STATED IN THE LDC.

GENERAL CONSTRUCTION NOTES

- 1. ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER WHO PREPARED THEM. IN APPROVING THESE PLANS, THE CITY OF AUSTIN MUST RELY ON THE ADEQUACY OF THE WORK OF THE DESIGN ENGINEER.
- 2. CONTRACTOR SHALL CALL THE "ONE CALL CENTER" (1-800-344-8733) FOR UTILITY LOCATIONS PRIOR TO ANY WORK IN THE CITY EASEMENTS OR STREET R.O.W.
- 3. CONTRACTOR SHALL NOTIFY THE DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION AT 974-7161 AT LEAST 24 HOURS PRIOR TO THE INSTALLATION OF ANY DRAINAGE FACILITY WITHIN A DRAINAGE EASEMENT OR STREET R.O.W. THE METHOD OF PLACEMENT AND COMPACTION OF BACKFILL IN THE CITY'S R.O.W. MUST BE APPROVED PRIOR TO THE START OF BACKFILL OPERATIONS.
- 4. FOR SLOPES OR TRENCHES GREATER THAN FIVE FEET IN DEPTH, A NOTE MUST BE ADDED STATING: "ALL CONSTRUCTION OPERATIONS SHALL BE IN ACCORDANCE WITH APPLICABLE REGULATIONS OF THE U.S. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)." (OSHA STANDARDS MAY BE PURCHASED FROM THE GOVERNMENT PRINTING OFFICE; INFORMATION AND RELATED REFERENCE MATERIALS MAY BE PURCHASED FROM OSHA, 611 EAST 6TH STREET, AUSTIN, TEXAS.)
- 5. ALL SITE WORK MUST COMPLY WITH ENVIRONMENTAL REQUIREMENTS.
- 6. UPON COMPLETION OF THE PROPOSED SITE IMPROVEMENTS AND PRIOR TO:
  - \* RELEASE OF THE CERTIFICATE OF OCCUPANCY BY THE WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT; OR,
  - \* INSTALLATION OF AN ELECTRICAL OR WATER METER (IN THE FIVE-MILE ETJ),THE ENGINEER SHALL CERTIFY IN WRITING THAT THE PROPOSED DRAINAGE, PARKING, ISLANDS, AND DRIVEWAYS WERE CONSTRUCTED IN CONFORMANCE WITH THE APPROVED PLANS.
- 7. ALL DETENTION BASINS, WATER QUALITY PONDS AND APPURTENANCES WHICH RECEIVE STORMWATER RUNOFF FROM COMMERCIAL DEVELOPMENTS SHALL BE MAINTAINED BY THE RECORD OWNER IN ACCORDANCE WITH THE MAINTENANCE STANDARDS IN THE DRAINAGE AND ENVIRONMENTAL CRITERIA MANUALS.
- 8. UPON COMPLETION OF THE PROPOSED SITE IMPROVEMENTS AND PRIOR TO THE RELEASE OF THE CERTIFICATE OF OCCUPANCY BY WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPARTMENT. THE DESIGNING ENGINEER SHALL CERTIFY IN WRITING THAT THE PROPOSED DRAINAGE AND DETENTION FACILITIES WERE CONSTRUCTED IN CONFORMITY TO THE APPROVED PLANS.
- 9. RELEASE OF THIS APPLICATION DOES NOT CONSTITUTE A VERIFICATION OF ALL DATA, INFORMATION AND CALCULATIONS SUPPLIED BY THE APPLICANT. THE ENGINEER OF RECORD IS SOLELY RESPONSIBLE FOR THE COMPLETENESS, ACCURACY AND ADEQUACY OF HIS/HER SUBMITAL, WHETHER OR NOT THE APPLICATION IS REVIEWED FOR CODE COMPLIANCE BY CITY ENGINEERS

THE PROPOSED SITE LIES INSIDE THE CITY OF AUSTIN LIMITS AND IS SUBJECT TO TRANSPORTATION REQUIREMENTS REGARDING PARKING, DRIVEWAYS, AND INTERNAL CIRCULATION.



VICINITY MAP  
NOT TO SCALE

LEGAL DESCRIPTION

10,850 S.F. OF LAND OUT OF LOT 14,  
EVERGREEN HEIGHTS SUBDIVISION,  
CONVEYED TO OWNER IN VOLUME 12059, PAGE 2693-2695  
OF THE TRAVIS COUNTY, TEXAS DEED RECORDS AND  
RECORDED IN BOOK Z, PAGE 614 OF  
PLAT RECORDS OF TRAVIS COUNTY, TEXAS.

BOARD OF ADJUSTMENT NOTE:  
A WAIVER TO THE COMPATIBILITY SETBACK FROM 19' 6" TO 5 FEET WAS GRANTED BOARD OF ADJUSTMENT ON FEBRUARY 9TH, 2004. CASE # C15-04-018

FIRE FLOW REQUIRED 1500 G/MIN  
FIRE FLOW AVAILABLE 1800 G/MIN

PROTECTED STREET? ☐ Y ☒ N  
ALTERNATIVES? ☐ Y ☒ N  
ALTERNATIVE 1  
ALTERNATIVE 2  
COST OF ALTERNATIVE 1 \$  
COST OF ALTERNATIVE 2 \$  
COMMENTS  
Evergreen Ave  
PROFESSIONAL ENGINEER  
Sergio N. Lozano  
4/28/2005  
UTILITY

AUSTIN WATER UTILITY  
EXPIRATION DATE  
APR 28 2006

Inspection Notice:  
Please contact Austin Water Utility, Customer Service Division at 722-0000 for arrangements for payment of inspection fees and job assignment for inspection of the public utilities related to this site. Inspection fees must be paid before any pre-construction meeting can be held.

REVIEWED BY THE AUSTIN WATER UTILITY APPLIES ONLY TO FACILITIES WITHIN PUBLIC STREETS OR PUBLIC UTILITY EASEMENTS. ALL OTHER WATER AND WASTEWATER FACILITIES INSIDE PRIVATE PROPERTY ARE UNDER THE JURISDICTION OF BUILDING INSPECTION.

ALL RESPONSIBILITY FOR THE ADEQUACY OF THESE PLANS REMAINS WITH THE ENGINEER. APPROVAL OF THESE PLANS BY THE CITY OF AUSTIN DOES NOT REMOVE THESE RESPONSIBILITIES.

I CERTIFY THAT THESE ENGINEERING DOCUMENTS ARE COMPLETE, ACCURATE AND ADEQUATE FOR THE INTENDED PURPOSES, INCLUDING CONSTRUCTION, BUT ARE NOT AUTHORIZED FOR CONSTRUCTION PRIOR TO FORMAL CITY APPROVAL.  
I DO HEREBY CERTIFY THAT THE ENGINEERING WORK BEING SUBMITTED HEREIN COMPLIES WITH ALL PROVISIONS OF THE TEXAS ENGINEERING PRACTICE ACT, INCLUDING SECTION 131.152(e). I HEREBY ACKNOWLEDGE THAT ANY MISREPRESENTATION REGARDING THIS CERTIFICATION CONSTITUTES A VIOLATION OF THE ACT, AND MAY RESULT IN CRIMINAL, CIVIL AND/OR ADMINISTRATIVE PENALTIES AGAINST ME, AS AUTHORIZED BY THE ACT.

SUBMITTED BY:

SERGIO LOZANO, P.E. LOC CONSULTANTS

JUAN GASCA  
APPROVED BY:

WATERSHED PROTECTION AND DEVELOPMENT REVIEW DEPT.

APPROVED BY:

AUSTIN WATER UTILITY

4/25/05  
DATE

4/28/05  
DATE

05-05-05  
DATE

04/28/2005  
DATE

SITE PLAN RELEASE

FILE NUMBER: SP-04-0377C EXPIRATION DATE: 05/05/06  
CASE MANAGER: Sue Welch APPLICATION DATE: 8/13/04  
APPROVED ADMINISTRATIVELY ON: 05/05/05  
APPROVED BY PLANNING COMMISSION ON:  
APPROVED BY CITY COUNCIL ON:  
under Section 17.02 of Chapter 155 of the Austin City Code.  
Director, Watershed Protection and Development Review  
DATE OF RELEASE: 05-05-05  
Rev. 1  
Rev. 2

AUSTIN FIRE DEPARTMENT  
MAY 0-2 2005  
APPROVED



### **ITEM FOR ENVIRONMENTAL COMMISSION AGENDA**

<b>COMMISSION MEETING DATE:</b>	January 18, 2022
<b>NAME &amp; NUMBER OF PROJECT:</b>	Evergreen Drainage Improvements SP-2022-0056D (W/R SP-2020-0148D)
<b>NAME OF APPLICANT OR ORGANIZATION:</b>	1800 Evergreen Development, LLC c/o Robert Easter
<b>LOCATION:</b>	1800 ½ Evergreen Ave, Austin, TX 78704
<b>COUNCIL DISTRICT:</b>	District 9
<b>ENVIRONMENTAL REVIEW STAFF:</b>	Miranda Reinhard, Environmental Scientist Senior Watershed Protection Department 512-978-1537, miranda.reinhard@austintexas.gov
<b>WATERSHED:</b>	West Bouldin Creek Watershed Urban Classification Desired Development Zone
<b>REQUEST:</b>	Variance request is as follows: <ol style="list-style-type: none"> <li>1. Request to vary from LDC 25-8-261(G) to allow floodplain modification for development within the Critical Water Quality Zone (CWQZ).</li> <li>2. Request to vary from LDC 25-8-281(C)(1)(a) to reduce the CEF setback to 50' and LDC 25-8-281(C)(2)(b) to allow construction within the reduced 50' CEF setback</li> </ol>
<b>STAFF RECOMMENDATION:</b>	Staff does not recommend these variances, having determined the findings of fact have not been met.
<b>STAFF CONDITION:</b>	N/A



Development Services Department  
Staff Recommendations Concerning Required Findings

Project Name: Evergreen Drainage Improvements SP-2022-0056D (W/R SP-2020-0148D)  
 Ordinance Standard: Watershed Protection Ordinance (current code)  
 Variance Request: Request to vary from LDC 25-8-261(G) to allow floodplain modification for development within the Critical Water Quality Zone (CWQZ).

Include an explanation with each applicable finding of fact.

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 available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain. Based on the limited information provided, this reviewer is unable to determine that the applicant would be deprived of a privilege available to owners of a “similarly situated property with approximately contemporaneous development subject to similar code requirements”. There does not appear to be precedent indicating as such.

2. The variance:

- a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain. Based on the limited information provided, this reviewer is unable to determine that the variance is necessitated by the scale, layout, construction method, or other design decision made by the applicant or if it provides greater overall environmental protection than is achievable without the variance.



- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain. Based on the limited information provided, this reviewer is unable to determine that the variance requested would be the minimum deviation from the code requirement necessary to allow a reasonable use of the property.

- c) Does not create a significant probability of harmful environmental consequences.

No The current submitted plan set does not provide restoration or mitigation for floodplain impacts compliant with ECM 1.7, wetland Critical Environmental Feature mitigation compliant with ECM 1.10.4 or any alternative strategies that would reduce the probability of harmful environmental consequences.

Additionally, without information on how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain, it is not possible to determine that the combined effect of improvements do not create a significant probability of harmful environmental consequences.

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

No The current submitted plan set does not provide restoration or mitigation for floodplain impacts compliant with ECM 1.7, wetland Critical Environmental Feature mitigation compliant with ECM 1.10.4 or any alternative strategies that would be protective of water quality.

Additionally, without information on how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain, it is not possible to determine that development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

- B. The Land Use Commission may grant a variance from a requirement of Section 25-8-422 (*Water Supply Suburban Water Quality Transition Zone*), Section 25-8-452 (*Water Supply Rural Water Quality Transition Zone*), Section 25-8-482 (*Barton Springs Zone Water Quality Transition Zone*), Section 25-8-368 (*Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long*), or Article 7, Division 1 ( *Critical Water Quality Zone Restrictions* ), after determining that::


1. The criteria for granting a variance in Subsection (A) are met;

No The criteria in Subsection (A) have not been met.

2. The requirement for which a variance is requested prevents a reasonable, economic use of the entire property;  
  
No The applicant has not proposed an economic use of the property at this time.
3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.  
  
No The applicant has not submitted a project by which staff can determine whether or not the variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the property.


Staff Determination: Staff determines that the findings of fact have not been met. Staff does not recommend this variance.

Wetland Biologist  
Reviewer (WPD)

  
\_\_\_\_\_  
(Miranda Reinhard)

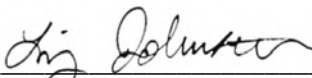
Date: 1/12/2023

Environmental  
Conservation Program  
Manager (WPD)

  
\_\_\_\_\_  
(John Clement)

Date: 1/12/2023

Deputy Environmental  
Officer (WPD)

  
\_\_\_\_\_  
(Liz Johnston)

Date: 01/12/2023



Development Services Department  
Staff Recommendations Concerning Required Findings

Project Name: Evergreen Drainage Improvements SP-2022-0056D (W/R SP-2020-0148D)  
 Ordinance Standard: Watershed Protection Ordinance (current code)  
 Variance Request: Request to vary from LDC 25-8-261(C)(1)(a) to reduce the Critical Environmental Feature (CEF) setback to 50' and LDC 25-8-281(C)(2)(b) to allow construction within the reduced 50' CEF setback

Include an explanation with each applicable finding of fact.

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 available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain and the associated impacts to the wetland CEF. Based on the limited information provided, this reviewer is unable to determine that the applicant would be deprived of a privilege available to owners of a "similarly situated property with approximately contemporaneous development subject to similar code requirements". There does not appear to be precedent indicating as such.

2. The variance:
  - a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain and the associated impacts to the wetland CEF. Based on the limited information provided, this reviewer is unable to determine that the variance is necessitated by the scale, layout, construction method, or other design decision made by the



applicant or if it provides greater overall environmental protection than is achievable without the variance.

- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

No The current submitted plan set does not indicate how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain and the associated impacts to the wetland CEF. Based on the limited information provided, this reviewer is unable to determine that the variance requested would be the minimum deviation from the code requirement necessary to allow a reasonable use of the property.

- c) Does not create a significant probability of harmful environmental consequences.

No The current submitted plan set does not provide restoration or mitigation for floodplain impacts compliant with ECM 1.7, wetland Critical Environmental Feature mitigation compliant with ECM 1.10.4 or any alternative strategies that would reduce the probability of harmful environmental consequences.

Additionally, without information on how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain and the associated impacts to the wetland CEF, it is not possible to determine that the combined effect of improvements do not create a significant probability of harmful environmental consequences.

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

No The current submitted plan set does not provide restoration or mitigation for floodplain impacts compliant with ECM 1.7, wetland Critical Environmental Feature mitigation compliant with ECM 1.10.4 or any alternative strategies that would be protective of water quality.

Additionally, without information on how the project site would be developed beyond the proposed modification of the CWQZ and 100-yr floodplain and the associated impacts to the wetland CEF, it is not possible to determine that development with the variance will result in water quality that is at least equal to the water quality achievable without the variance.

- B. The Land Use Commission may grant a variance from a requirement of Section 25-8-422 (*Water Supply Suburban Water Quality Transition Zone*), Section 25-8-452 (*Water Supply Rural Water Quality Transition Zone*), Section 25-8-482 (*Barton Springs Zone Water Quality Transition Zone*), Section 25-8-368 (*Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long*), or Article 7, Division 1 ( *Critical Water Quality Zone Restrictions* ), after determining that::

1. The criteria for granting a variance in Subsection (A) are met;

- No      The criteria in Subsection (A) have not been met.
2.      The requirement for which a variance is requested prevents a reasonable, economic use of the entire property;
- No      The applicant has not proposed an economic use of the property at this time.
3.      The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.
- No      The applicant has not submitted a project by which staff can determine whether or not the variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the property.

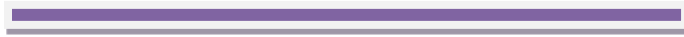
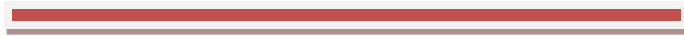
Staff Determination: Staff determines that the findings of fact have not been met. Staff does not recommend this variance.

Wetland Biologist Reviewer (WPD)	 _____ (Miranda Reinhard)	Date: 1/12/2023
Environmental Conservation Program Manager (WPD)	 _____ (John Clement)	Date: 1/12/2023
Deputy Environmental Officer (WPD)	 _____ (Liz Johnston)	Date: 01/12/2023

January 9, 2023



## ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM



### PROJECT DESCRIPTION

#### Applicant Contact Information

Name of Applicant	1800 Evergreen Development, LLC
Street Address	169 Griffin Blvd Suite 106
City State ZIP Code	Panama City Beach, FL 32413
Work Phone	512-633-7960
E-Mail Address	reaster@coastproductsusa.com

#### Variance Case Information

Case Name	Evergreen Drainage Improvements
Case Number	SP-2022-0056D (W/R SP-2020-148D)
Address or Location	1800 Evergreen Avenue, Austin, Texas 78701
Environmental Reviewer Name	Mike McDougal
Environmental Resource Management / Wetlands Biologist Reviewer Name	Miranda Reinhard
Applicable Ordinance / Code	§25-8-261(G)
Watershed Name	West Bouldin Creek
Watershed Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input type="checkbox"/> Water Supply Rural <input type="checkbox"/> Barton Springs Zone



January 9, 2023

Edwards Aquifer Recharge Zone	<input type="checkbox"/> Barton Springs Segment <input type="checkbox"/> Northern Edwards Segment <input checked="" type="checkbox"/> Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Distance to Nearest Classified Waterway	On the property.
Water and Wastewater service to be provided by	Austin Water (City of Austin)
Request	<p>The variance request is as follows (Cite code references):</p> <p>§25-8-261(G) (Development within CWQZ—floodplain modification)</p>

Impervious cover	Existing	Proposed
square footage:	<u>0</u>	<u>0</u>
acreage:	<u>0</u>	<u>0</u>
percentage:	<u>0</u>	<u>0</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)	<p>The Property is a 0.754-acre undeveloped parcel located at the corner of West Mary St. (“<b>Mary</b>”) and Evergreen Ave (“<b>Evergreen</b>”). The Property is the last undeveloped portion of Lot 14, Evergreen Heights subdivision recorded in Volume Z, Page 614, Plat Records of Travis County, Texas (“<b>Evergreen Heights Plat</b>”). The Property is also the last undeveloped parcel on the block bounded by South Lamar, Evergreen, West Mary and Heather. See <b>Exhibits 1 and 6</b>.</p> <p>The waterway on the Property receives stormwater from an enclosed storm sewer system draining approximately 77 acres west of South Lamar. See <b>Exhibit 2</b>. The waterway is classified as a Minor Waterway. The waterway on this tract (and 81 feet on the adjacent tract to the west; 300 feet in total length) is the <u>ONLY</u> portion of this waterway that is not within an enclosed storm sewer. See <b>Exhibits 1, 2, 12, 13, and 14</b>.</p>	

January 9, 2023

	<p>Stormwater from west of Lamar passes through a neighborhood storm sewer collection system, then through two 4' X 4' TxDOT constructed box culverts under South Lamar, crosses an adjacent lot in a narrow open channel before entering the Property. The waterway continues as an open channel as it crosses the Property until it reaches the Evergreen ROW. The enclosed storm sewer system resumes as stormwater drains through a City constructed single 5' X 6' culvert in the Evergreen ROW adjacent to the Property ("<b>Evergreen Culvert</b>"). The Evergreen Culvert goes approximately 500 feet to the north within the Evergreen ROW before turning east and discharging into West Bouldin Creek. See <b>Exhibits 13 and 14</b>.</p> <p>Elevations on the Property range from 528' at the low point of the waterway adjacent to the Evergreen Culvert to 539' near the northwest corner of the Property. See <b>Exhibits 1b and 3</b>. The City of Austin fully developed 100-year Atlas14 floodplain ("<b>Floodplain</b>") varies in elevation across the tract ranging from approximately 533' at Evergreen Ave. to 537' at the northwest corner of the Property. See <b>Exhibit 7</b>. The average slope of the Property is 2.8 percent, which is considered flat, but with a gentle slope. The Property is relatively open and has numerous large trees including several heritage trees. See <b>Exhibit 4</b>.</p> <p>The Evergreen Heights Plat shows a waterway running through the middle of the 233' wide Lot 14. See <b>Exhibit 6</b>. The waterway was moved (apparently at some point prior to 1955) more than 100' to its current location along the Property's southwest property line as a part of drainage project under South Lamar.</p> <p>The City of Austin Floodplain and CWQZ encompass all the Property except for approximately 3,800 square feet near the northwest corner. This small area has no frontage on a public road. See <b>Exhibit 7</b>.</p> <p>The Environmental Resource Inventory (ERI) prepared by Horizon Environmental (2019) identifies the bottom of the waterway on the Property as a wetland ("<b>CEF</b>"). Based on available information, retained water in the waterway channel is due to the design of the adjacent Evergreen Culvert. The 150' CEF setback covers the entire Property. See <b>Exhibit 7</b>. Variance applications relating to the CEF setback have been submitted concurrently with this application.</p>
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January 9, 2023

	<p>The Property has approximately 47.50' of frontage on West Mary. Driveway access to West Mary is not possible due to the waterway, the Floodplain, the CWQZ and proximity to the Evergreen/West Mary intersection. See <b>Exhibit 3 and 16</b>.</p> <p>The Property has approximately 131.5' of frontage on Evergreen. Driveway access to Evergreen is limited due to the Floodplain, CWQZ, and a 24" pecan tree located approximately 73 feet from West Mary Street. The ½ Critical Root Zone is 25' from the north property line, which is too close to the adjacent property to construct a code compliant driveway. See <b>Exhibit 7</b>.</p> <p>The applicant has requested and obtained a waiver from the Public Works Department to allow placement of a driveway near the northern property line to avoid the ½ Critical Root Zone of the 24" Pecan tree. See <b>Exhibit 8</b>.</p> <p>While the driveway waiver saves the Pecan tree, the requested variance is still necessary to construct a driveway as shown on <b>Exhibit 8</b>.</p>
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<p>Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)</p>	<p>A variance is requested to allow modification of the Floodplain within a CWQZ. See <b>Exhibit 9 and 10</b>.</p> <p>The proposed project would modify the Floodplain to a width of 50' from the centerline of the waterway by benching the eastern overbank. The proposed Floodplain modification would take place within the CWQZ. See <b>Exhibit 9 and 10</b>. Upon completion of the proposed Floodplain modification, the CQWZ would be 50' from the centerline of the waterway pursuant to §25-8-92(C)(1).</p> <p>If a 150-foot setback from the CEF is applied to the Property, no portion of the Property can be developed. See <b>Exhibit 3</b>.</p> <p>If the CWQZ variance and accompanying CEF variances are granted, the Property would have approximately 33 feet of Evergreen frontage outside of the modified 50' wide Floodplain, 50' CWQZ, and 50' CEF setback. With the Public Works Department waiver, a driveway can be constructed within the 25' between the edge of the ½ Critical Root Zone and the property line. See <b>Exhibit 8</b>.</p>
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January 9, 2023

	A 25" American Elm (# 492 on tree survey) and 23" Cedar Elm (# 347 on tree survey) would have to be removed to construct the proposed floodplain modification.
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## **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:** Evergreen Drainage Improvements (SP-2022-0056D)

**Ordinances:** §25-8-261(G) (Floodplain Modification in CWQZ).

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 available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

☐ Yes / No

Yes. The Property cannot be developed without the requested variance. The Property is the last undeveloped parcel of land in the block bounded by Evergreen Avenue, West Mary, Heather, and South Lamar. The Property is surrounded by development or roads on all sides. The waterway in question is an enclosed storm sewer line upstream and downstream of the Property which has allowed the surrounding area to develop. The most recent plat and development approvals in the adjacent to the Property include:

a) Resubdivision of a Portion of Lot 14 of Evergreen Heights (C8-2012-0117.OA), recorded in Document No. 201300205, TCOPR ("**Garadi Plat**"). A portion of the .333 acres in the Giraldis Plat is located between the Property and South Lamar and is crossed by the same waterway. The Garadi Plat shows the CWQZ limited to 50' in width and a 10' wide drainage easement. See **Exhibit 12** for a copy of Garadi Plat.

b) City CIP project *Evergreen Avenue Drainage Improvements* (SP-98-0163D) constructed an inlet structure along the Property's Evergreen frontage, and then a 6' X 5' culvert northward in Evergreen and then east toward West Bouldin Creek. Although the City Code required

January 9, 2023

identification of CEFs within 150 feet of the project, there is no reference in the construction sheets to a wetland, CEF, or CWQZ on the Property. See **Exhibits 13 and 14**.

2. The variance:
- a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

☐ Yes / No

Yes. The variance is needed to allow any development of the Property. Without the variances, driveway access to and development of the Property is impossible. There is no alternative scale, layout, construction method or other design decision that would obviate the need for the requested variances. See **Exhibit 7**.

The CWQZ and Floodplain encompass 100% of the Property's frontage on public roads-- Evergreen and West Mary.

- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

☐ Yes / No

Yes. The width of the Floodplain and CWQZ in Urban Watersheds may be reduced to 50' from the centerline of the waterway. Section 25-8-92(c)(1). A separate Land Use Commission variance application has been submitted to reduce the CEF setback 50' if the CEF is otherwise protected. The waterway would be modified to convey and contain runoff from the 100-year storm event within the modified Floodplain. The proposed mitigation and restoration of riparian area plan is shown in **Exhibit 15**. Construction of the driveway will not affect the CEF because runoff will be directed to on-site water quality ponds or, for the initial apron, to the downstream storm sewer.

- c) Does not create a significant probability of harmful environmental consequences.

☐ Yes / No

Yes. On-site water quality ponds compliant with City requirements will be provided for impervious cover on the Property. The modified Floodplain will enhance vegetative filtration by slowing the velocity of runoff. The waterway bottom will be protected during and after

January 9, 2023

construction. Riparian restoration will be installed within the modified Floodplain but outside of the waterway bottom.

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

☒ Yes / No

Yes, without the approval of the requested variance, the Property will remain vacant and provide minimal, if any, water quality benefit. On-site water quality ponds will treat runoff from impervious cover on the Property. The modified Floodplain will enhance vegetative filtration by slowing the velocity of runoff. The waterway bottom will be protected during and after construction. Riparian restoration will be installed within the modified Floodplain but outside of the waterway bottom.

- B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7, Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-368 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):

1. The criteria for granting a variance in Subsection (A) are met;

☒ Yes / No

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

☒ Yes / No

Yes. The variance is needed to allow any development of the Property. Driveway access to and development of the Property is impossible without the approval the requested variance. The CWQZ and Floodplain encompass 100% of the Property's frontage on public roads--Evergreen and West Mary. Even with the driveway waiver, the driveway would intrude into the Floodplain, CWQZ and the CEF setback area. The City Council determined the reasonable use of the Property by zoning the Property CS-MU-CO by Ordinance No. 010329-46. See **Exhibit 17**.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.



January 9, 2023

☐ Yes / No

Yes. Floodplains and CWQZs in Urban Watersheds may be reduced to 50' in width. See §§25-8-261(E) & (H). The variance requests modification of the Floodplain within the CWQZ and approval to limit the width of the modified Floodplain and modified CWQZ to 50' from the centerline of the waterway. The CEF will be protected from disturbance during construction. The riparian area of the waterway will be restored.

The Property contains 32,844 square feet and is currently undevelopable due to its limited frontage on Evergreen and Mary. The Floodplain and CWQZ setback limitations prohibit a driveway onto Evergreen and all development on the Property. A 50' wide Floodplain/CWQZ would contain approximately 14,069 square feet or approximately 42.8% of the net site (after dedication of 1,105 square feet for right of way for Evergreen Ave.

If this CWQZ variance request and the CEF variances are granted, an estimated 18,000 square feet or 54% of the gross site would be available for development.

The estimated 18,000 square feet would then be subjected to all other development regulations, including, tree ordinances, compatibility standards, Commercial Design Standards, and Fire Code requirement for a drive adjacent to buildings on the Property.

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



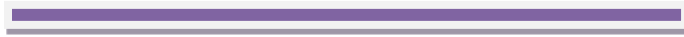
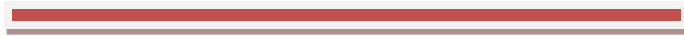
## Exhibits for Commission Variance

- Aerial photos of the site
- Site photos
- Aerial photos of the vicinity
- Context Map—A map illustrating the subject property in relation to developments in the vicinity to include nearby major streets and waterways
- Topographic Map - A topographic map is recommended if a significant grade change on the subject site exists or if there is a significant difference in grade in relation to adjacent properties.
- For cut/fill variances, a plan sheet showing areas and depth of cut/fill with topographic elevations.
- Site plan showing existing conditions if development exists currently on the property
- Proposed Site Plan- full size electronic or at least legible 11x17 showing proposed development, include tree survey if required as part of site or subdivision plan
- Environmental Map – A map that shows pertinent features including Floodplain, CWQZ, WQTZ, CEFs, Setbacks, Recharge Zone, etc.
- An Environmental Resource Inventory pursuant to ECM 1.3.0 ([if required by 25-8-121](#))
- Applicant's variance request letter

January 9, 2023



## ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM



### PROJECT DESCRIPTION

#### Applicant Contact Information

Name of Applicant	1800 Evergreen Development., LLC
Street Address	169 Griffin Blvd Suite 106
City State ZIP Code	Panama City Beach, FL 32413
Work Phone	512-633-7960
E-Mail Address	reaster@coastproductsusa.com

#### Variance Case Information

Case Name	Evergreen Drainage Improvements
Case Number	SP-2022-0056D (W/R SP-2020-148D)
Address or Location	1800 Evergreen Avenue, Austin, Texas 78701
Environmental Reviewer Name	Mike McDougal
Environmental Resource Management / Wetlands Biologist Reviewer Name	Miranda Reinhard
Applicable Ordinance / Code	§25-8-281(C)(1)(a) and §25-8-281(C)(2)(b)
Watershed Name	West Bouldin Creek
Watershed Classification	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Water Supply Suburban <input type="checkbox"/> Water Supply Rural <input type="checkbox"/> Barton Springs Zone



January 9, 2023

Edwards Aquifer Recharge Zone	<input type="checkbox"/> Barton Springs Segment <input type="checkbox"/> Northern Edwards Segment <input checked="" type="checkbox"/> Not in Edwards Aquifer Zones
Edwards Aquifer Contributing Zone	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Distance to Nearest Classified Waterway	On the property.
Water and Wastewater service to be provided by	Austin Water (City of Austin)
Request	The variance request is as follows (Cite code references):  §25-8-281(C)(1)(a) (Reduction of CEF Setback to 50') and  §25-8-281(C)(2)(b) (Allow construction within 50' CEF Setback)

Impervious cover	Existing	Proposed
square footage:	<u>0</u>	<u>0</u>
acreage:	<u>0</u>	<u>0</u>
percentage:	<u>0</u>	<u>0</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)	<p>The Property is a 0.754-acre undeveloped parcel located at the corner of West Mary St. ("<b>Mary</b>") and Evergreen Ave ("<b>Evergreen</b>"). The Property is the last undeveloped portion of Lot 14, Evergreen Heights subdivision recorded in Volume Z, Page 614, Plat Records of Travis County, Texas ("<b>Evergreen Heights Plat</b>"). The Property is also the last undeveloped parcel on the block bounded by South Lamar, Evergreen, West Mary, and Heather. See <b>Exhibits 1 and 6</b>.</p> <p>The waterway on the Property receives stormwater from an enclosed storm sewer system draining approximately 77 acres west of South Lamar. See <b>Exhibit 2</b>. The waterway is classified as a Minor Waterway. The waterway on this tract and the adjacent lot to the west are the <b>ONLY</b> portion of this waterway that are not within an enclosed storm sewer system. See <b>Exhibits 1, 2, 12, 13, and 14</b>.</p> <p>Stormwater from west of Lamar passes through a neighborhood storm sewer collection system, then through two 4' X 4' TxDOT constructed box culverts under</p>	

January 9, 2023

	<p>South Lamar, crosses an adjacent lot in a narrow open channel before entering the Property. The waterway continues as an open channel as it crosses the Property until it reaches the Evergreen ROW. The enclosed storm sewer system resumes as stormwater drains through a City constructed single 5' X 6' culvert in the Evergreen ROW adjacent to the Property ("<b>Evergreen Culvert</b>"). The Evergreen Culvert goes approximately 500 feet to the north within the Evergreen ROW before turning east and discharging into West Bouldin Creek. See <b>Exhibits 13 and 14</b>.</p> <p>Elevations on the Property range from 528' at the low point of the waterway adjacent to the Evergreen Culvert to 539' near the northwest corner of the Property. See <b>Exhibits 1b and 3</b>. The City of Austin fully developed 100-year Atlas14 floodplain ("<b>Floodplain</b>") varies in elevation across the tract ranging from approximately 533' at Evergreen Ave. to 537' at the northwest corner of the Property. See <b>Exhibit 7</b>. The average slope of the Property is 2.8 percent, which is considered flat, but with a gentle slope. The Property is relatively open and has numerous large trees including several heritage trees. See <b>Exhibit 4</b>.</p> <p>The Evergreen Heights Plat shows a waterway running through the middle of the 233' wide Lot 14. See <b>Exhibit 6</b>. The waterway was moved (at some point prior to 1955) more than 100' to its current location along the Property's southwest property line as a part of drainage project under South Lamar.</p> <p>The Floodplain and CWQZ encompass all the Property except for approximately 3,800 square feet near the northwest corner. This small area has no frontage on a public road. See <b>Exhibit 7</b>.</p> <p>The Environmental Resource Inventory (ERI) prepared by Horizon Environmental (2019) identifies the bottom of the waterway on the Property as a wetland ("<b>CEF</b>"). More precisely, Horizon describes the CEF as being five feet wide and the entire length of the waterway on the Property. Therefore, the 150' CEF setback covers the entire Property. See <b>Exhibit 7</b>.</p> <p>The Property has approximately 47.50' of frontage on West Mary. Driveway access to West Mary is not possible due to the waterway, Floodplain, and proximity to the Evergreen/West Mary intersection. See <b>Exhibit 3 and 16</b>.</p>
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January 9, 2023

	<p>The Property has approximately 131.5' of frontage on Evergreen. Driveway access to Evergreen is currently prohibited by Floodplain, CWQZ, and CEF regulations. Additionally, there is a 24" pecan tree located approximately 73 feet from West Mary Street. The ½ Critical Root Zone is 25' from the north property line, which is too close to the adjacent property to construct a code compliant driveway. See <b>Exhibit 7</b>.</p> <p>The applicant has requested and obtained a waiver from the Public Works Department to allow placement of a driveway near the northern property line to avoid the ½ Critical Root Zone of the 24" Pecan tree. See <b>Exhibit 8</b>.</p> <p>While the driveway waiver saves the Pecan tree, the requested variances are still necessary to construct a driveway as shown on <b>Exhibit 8</b>.</p>	
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Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)	<p>Variances are being requested to reduce the CEF setback to 50 feet and to allow construction within the 50-foot CEF setback to modify the floodplain on the Property. See <b>Exhibit 9 and 10</b>.</p> <p>The proposed project would modify the Floodplain to a width of 50' from the centerline of the waterway by benching the eastern overbank. See <b>Exhibits 3, 9, and 12</b>. The proposed Floodplain modification would take place within a CEF setback because the entire site is within the 150' CEF setback. See <b>Exhibit 9 and 10</b>. Upon completion of the proposed Floodplain modification, the CQWZ would be 50' from the centerline of the waterway pursuant to §25-8-92(C)(1).</p> <p>The applicant requests a variance to reduce the CEF setback to 50' so that there is a single regulatory line protecting the waterway and the CEF and the remainder of the Property can be developed.</p> <p>If the requested variances are granted, the Property would have approximately 33 feet of Evergreen frontage outside of the modified 50' wide Floodplain, 50' CWQZ, and 50' CEF setback. With the Public Works Department waiver, a driveway can be constructed within the 25' between the edge of the ½ Critical Root Zone and the property line. See <b>Exhibit 8</b>.</p>
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January 9, 2023

	A 25" American Elm (# 492 on tree survey) and 23" Cedar Elm (# 347 on tree survey) would have to be removed to construct the proposed floodplain modification.
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## **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: Evergreen Drainage Improvements (SP-2022-0056D)**

Ordinances: §25-8-281(C)(1)(a) (Reduction of CEF setback to 50') and §25-8-281(C)(2)(b) (allow construction of the floodplain modification within the reduced 50' CEF setback).

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 available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.

☐ Yes / No

Yes. The Property cannot be developed without the requested variances. The 150' CEF setback covers the entire property and §25-8-281(C)(2)(b) prohibits construction within a CEF setback. Modification of the Floodplain requires construction within 50' of the bottom of the waterway which is identified as a CEF. The Property is the last undeveloped parcel of land in the block bounded by Evergreen Avenue, West Mary, Heather, and South Lamar. The Property is also the recipient of externalities created by prior development of the area. Development and roads surround the Property on all sides. See **Exhibit 1**. As previously discussed, the waterway on the Property is a segment of a West Bouldin Creek contained in an enclosed storm sewer system in conjunction with development of the surrounding area upstream and downstream from the Property. The waterway was relocated on the Property in the 1950s in conjunction with road improvements to South Lamar Blvd.

January 9, 2023

At the Evergreen Culvert, Evergreen Green Ave. has an elevation of ~532' MSL which is approximately 4 feet higher than the adjacent low point of the Property (~528' MSL). On the east side of Evergreen Ave. across from the Property, the ground elevation is 516' MSL which is approximately 16 feet lower than Evergreen Ave. The location of the waterway and how the waterway drains are the result of adjacent development. Therefore, the standing water in the waterway and the designation as wetlands are also the result of adjacent private and public development.

The most recent plat and development approvals near the Property include:

- a) Resubdivision of a Portion of Lot 14 of Evergreen Heights (C8-2012-0117.OA), recorded in Document No. 201300205, TCOPR ("**Garadi Plat**"). A portion of the .333 acres in the Giraldi Plat is located between the Property and South Lamar and is crossed by the same waterway. The Garadi Plat shows the CWQZ limited to 50' in width and a 10' wide drainage easement. See **Exhibit 12** for a copy of Garadi Plat.
- b) City CIP project *Evergreen Avenue Drainage Improvements* (SP-98-0163D) constructed an inlet structure along the Property's Evergreen frontage, and then a 6' X 5' culvert northward in Evergreen and then east toward West Bouldin Creek. Although the City Code requires the identification of CEFs within 150 feet of the project, there is no reference in the construction sheets to a wetland or CEF on the Property. This City CIP project limited work to within the Evergreen right of way. See **Exhibits 13 and 14**.
- c) SP-04-0377C applies to the property located at 1710 Evergreen which is the tract on the north side of the Property. According to the cover page of the approved and released site plan, there are no CEF's within 150' of the property. See **Exhibit 24**. The CEF on the Property is located approximately 83 feet from the tract located at 1710 Evergreen.

2. The variance:

- a) Is not necessitated by the scale, layout, construction method, or other design decision made by the applicant, unless the design decision provides greater overall environmental protection than is achievable without the variance;

☐ Yes / No

January 9, 2023

Yes. The 150' CEF setback encompasses 100% of the Property, thus precluding all development of the Property. The Floodplain and CWQZ encompass all the Property except for approximately 3,800 square feet near the northwest corner. This small area has no frontage on a public road. See **Exhibit 7**.

Approval of the variances is needed to allow any development of the Property. Without the variances, driveway access and floodplain modification are impossible, making the development of the Property impossible. There is no alternative scale, layout, construction method or other design decision that would obviate the need for the requested variances. Modifying the floodplain on the Property requires construction within the 50' CEF setback. See **Exhibit 7**.

- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;

☐ Yes / No

Yes. The width of the Floodplain and CWQZ in Urban Watersheds may be reduced to 50' from the centerline of the waterway. Section 25-8-92(c)(1). A CEF setback may be reduced to 50' if the CEF is otherwise protected. The waterway would be modified to convey and contain runoff from the 100-year storm event within the modified Floodplain. The Applicant proposes a 1:1 mitigation and restoration of riparian area plan. See **Exhibit 15**. Construction of the driveway will not affect the CEF because runoff will be directed to on-site water quality ponds or, for the initial apron, to the downstream storm sewer.

- c) Does not create a significant probability of harmful environmental consequences.

☐ Yes / No

Yes. On-site water quality ponds compliant with City requirements will be provided for impervious cover on the Property. The modified Floodplain will enhance vegetative filtration by slowing the velocity of runoff. The waterway bottom will be protected during and after construction. Riparian restoration will be installed within the modified Floodplain but outside of the waterway bottom.

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

☐ Yes / No



January 9, 2023

Yes, without the requested variances, the Property will remain vacant and provide minimal, if any, water quality benefit. On-site water quality ponds will treat runoff from impervious cover on the Property. The modified Floodplain will enhance vegetative filtration by slowing the velocity of runoff. The waterway bottom will be protected during and after construction. Riparian restoration will be installed within the modified Floodplain but outside of the waterway bottom.

B. Additional Land Use Commission variance determinations for a requirement of Section 25-8-422 (Water Quality Transition Zone), Section 25-8-452 (Water Quality Transition Zone), Article 7, Division 1 (Critical Water Quality Zone Restrictions), or Section 25-8-368 (Restrictions on Development Impacting Lake Austin, Lady Bird Lake, and Lake Walter E. Long):

1. The criteria for granting a variance in Subsection (A) are met;

☐ Yes / No

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

☐ Yes / No

Yes. The variances are necessary to allow any development of the Property. Driveway access and floodplain modification on the Property are impossible without the variances. The 150' CEF setback encompasses 100% of the Property. Reduction of the CEF setback to 50 feet is necessary to install a driveway onto Evergreen; otherwise, development of all portions of the Property is impossible and there can be no reasonable, economic use of the Property. Construction within the CEF setback is necessary to modify the floodplain and reduce the floodplain and CWQZ to 50'. The City Council determined the reasonable use of the Property by zoning the Property CS-MU-CO by Ordinance No. 010329-46. See **Exhibit 17**.

3. The variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.

☐ Yes / No

Yes. A CEF setback may be reduced to 50 feet if the CEF is otherwise protected. The variance requests approval to limit the width of the CEF setback to 50 feet from the centerline of the waterway and modification of the Floodplain within the 50' CEF setback. The CEF will be protected from disturbance during construction. The riparian area of the waterway will be restored. See **Exhibit 15**.

January 9, 2023

The Property contains 32,844 square feet and is currently undevelopable due to its limited frontage on Evergreen and Mary. The Floodplain, CWQZ and CEF setback limitations prohibit a driveway onto Evergreen and all development on the Property. A 50' wide Floodplain/CWQZ would contain approximately 14,069 square feet or approximately 42.8% of the net site (after dedication of 1,105 square feet for right of way for Evergreen Ave.

If all variances are granted, an estimated 18,000 square feet or 54% of the gross site area would be available for development.

The estimated 18,000 square feet would then be subjected to all other development regulations, including tree ordinances, compatibility standards, Commercial Design Standards, and Fire Code requirement for a drive adjacent to buildings on the Property.

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



## Exhibits for Commission Variance

- Aerial photos of the site
- Site photos
- Aerial photos of the vicinity
- Context Map—A map illustrating the subject property in relation to developments in the vicinity to include nearby major streets and waterways
- Topographic Map - A topographic map is recommended if a significant grade change on the subject site exists or if there is a significant difference in grade in relation to adjacent properties.
- For cut/fill variances, a plan sheet showing areas and depth of cut/fill with topographic elevations.
- Site plan showing existing conditions if development exists currently on the property
- Proposed Site Plan- full size electronic or at least legible 11x17 showing proposed development, include tree survey if required as part of site or subdivision plan
- Environmental Map – A map that shows pertinent features including Floodplain, CWQZ, WQTZ, CEFs, Setbacks, Recharge Zone, etc.
- An Environmental Resource Inventory pursuant to ECM 1.3.0 (*if required by 25-8-121*)
- Applicant's variance request letter

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January 9, 2023

Land Use Commission  
City of Austin  
301 W. 2<sup>nd</sup> Street  
Austin, Texas 78701

Re: 1800 1/2 Evergreen Ave.; Site Plan Application SP-2022-0056D (W/R SP-2021-0148D); Request for Land Use Commission Variances to Modify the Floodplain Within a Critical Water Quality Zone (§25-8-261) and within a CEF Setback (§25-8-281(C)(2)(b) and to Reduce the CEF Setback to 50' §25-8-281(C)(2)(b)

Dear Commissioners:

1800 Evergreen Development, LLC ("**Applicant**") owns an approximately 0.754-acre parcel of land located at 1800 1/2 Evergreen Avenue ("**Property**"). This firm represents the Applicant with respect to the above referenced site plan application to modify the floodplain on the Property to contain the 100-year storm event within a 50-foot wide open channel. On behalf of the Applicant, I submitted applications for the above referenced variances in July 2022.

This letter replaces the letter I sent with the Variance Application Forms submitted last July. At the suggestion of staff, the Applicant has updated the two Variance Application Forms that I am transmitting with this letter. The Variance Application Forms address the technical aspects of the proposed modification of the 100-year floodplain within an Urban Watershed critical water quality zone ("**CWQZ**"), the reduction of a CEF setback to 50', and the modification of the 100-year floodplain within the 50' CEF setback. The Exhibits submitted last July and this letter supplement the updated Variance Application Forms.

The Property

The Property contains 0.754 acres and is the last undeveloped portion of Lot 14, Evergreen Heights Subdivision, recorded in Volume Z, Page 614, Plat Records of Travis County, Texas on April 28, 1897 ("**Evergreen Heights Plat**"). See **Exhibit 6**. Due to the configuration and size of the Property, a driveway to the Property must be located on Evergreen Ave.



The Evergreen Heights Plat shows a tributary of West Bouldin Creek (“**Tributary**”) crossing the east property line of the original Lot 14 at approximately the mid-point of Lot 14’s frontage on South Lamar Blvd.<sup>1</sup> See **Exhibit 6**. The Tributary, as shown on the Evergreen Heights Plat, was filled in and moved to its present location before 1955 as part of a South Lamar Blvd. improvements project. The relocated Tributary now crosses the Property along the Property’s southeastern and eastern property lines. When TxDOT relocated the Tributary on the Property, TxDOT did not obtain a drainage easement.

Around 1962, the City of Austin constructed a sanitary sewer line where the tributary had been located as shown on the Evergreen Heights Plat. See **Exhibit 18**. Except for the construction of a sanitary sewer line by the City, there are no City records of development on the Property.

#### West Bouldin Creek Tributary

West of Lamar Blvd, an enclosed storm sewer system contains and conveys the Tributary. The enclosed storm sewer system collects stormwater runoff from approximately 77 acres west of South Lamar and then crosses under South Lamar Blvd. through two 4’ x 4’ box culverts installed by TxDOT (“**Lamar Box Culverts**”). See **Exhibit 2**.

The South Lamar Box Culverts discharge stormwater onto a narrow portion of a .33-acre lot described in the Resubdivision of a Portion of Lot 14 of Evergreen Heights (C8-2012-0117.OA), recorded in Document No. 201300205, Travis County Official Public Records (“**Garadi Plat**”). The Garadi Plat shows the CWQZ limited to 50’ from the center line of the Tributary as well as a 10’ wide drainage easement. See **Exhibit 11** for a copy of Garadi Plat. The segment of the Tributary crossing the Garadi Plat is an approximately 80 feet long open channel. See **Exhibit 12** for a close up of the actual plat drawing. The Garadi Plat has one lot (“**Garadi Lot**”).

The Tributary on the Property is an open channel until it returns to an enclosed storm sewer in the Evergreen Ave. right of way. In sum, nearly the entire length of the Tributary is contained in an enclosed storm sewer system except for the open channel between South Lamar and Evergreen Ave. and the last segment between Evergreen Ave. and West Bouldin Creek.

#### Adjacent Development

The Property is the last undeveloped parcel on the block bounded by South Lamar, Evergreen Ave., West Mary St., and Heather St. See **Exhibit 1**.

Two adjacent tracts have existing development within 50 feet of the centerline the open channel portion of the Tributary on the Property and the Garadi Lot. See **Exhibit 5 and 5b**. The red building is Austin’s Pizza located at 1817 South Lamar. According to the Travis Central

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<sup>1</sup> In 1897, South Lamar was located where Evergreen Ave. is currently located.

Appraisal District (“TCAD”) records, the Austin’s Pizza building was constructed in 1966. Viewing the eastern portion of the Austin’s Pizza tract from the Property, one can see that a significant amount of fill was placed on the Austin’s Pizza tract to bring the back portion the tract to the approximate elevation of West Mary Street. The Austin’s Pizza tract has a driveway onto West Mary Street. As a result of the significant fill on the Austin’s Pizza tract, the Tributary is pushed onto the Property.

The blue building shown in **Exhibits 5 and 5b** is located at 1807 South Lamar on the Garadi Lot. According to TCAD records, the blue building is a manufactured structure placed on the Garadi Lot in 1995. The blue building appears to be used as a used car lot.

In 1998, the City obtained a site development permit for a CIP project known as the Evergreen Avenue Drainage Improvements (SP-98-0163D). The CIP project replaced a storm sewer pipe with a single barrel 6’ by 5’ box culvert constructed adjacent to the eastern edge of the Property in the Evergreen Ave. right of way (“**Evergreen Culvert**”). The Evergreen Culvert project included the construction of an enclosed storm sewer extending approximately 500 feet from the Evergreen Culvert to the north within the Evergreen ROW before turning east and discharging into West Bouldin Creek. See **Exhibits 13 and 14**. The stated purpose of the Evergreen Culvert project was to protect the historic house known as Millbrook, located at 1803 Evergreen (across Evergreen from the Property) and to provide drainage improvements for Evergreen Avenue itself.<sup>2</sup> See **Exhibit 19**. Prior to the Evergreen Culvert project, stormwater passed straight under Evergreen and discharged onto the lot with the historic house.

Sheet 3 of the released site development plans for the Evergreen Culvert project shows the results of a tree survey on the Property but do not identify a wetland or other CEF on the Property. See **Exhibit 13**. The cover sheet of the plans contains the statement “The City of Austin has reviewed this plan for compliance with city development regulations only.” See **Exhibit 21**. An Environmental Site Assessment (ERSI today) should have been required due to the CWQZ on the Property. Assuming site development plans for the Evergreen Culvert complied with City development regulations in effect in 1998, then the absence of a wetland or a CEF on the plans means there was no wetland or CEF on the Property.

As discussed in more detail below, the City commissioned Holt Planners to prepare a Development Analysis of the Property in 2003 based on then current City regulations. The Holt

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<sup>2</sup> Engineers Summary Letter for the Evergreen Avenue Drainage Improvements Single Barrel 6’ x 5’ Box Culvert and Storm Sewer prepared for the City of Austin Drainage Utility Department by Espey, Padden Consultants, Inc; April 17, 1998. See **Exhibit 19**. The Engineer’s Summary Letter was included in a September 15, 2003 Development Analysis of the Property prepared by Holt Planners on behalf of the City. The entire Holt report is **Exhibit 20**.

Report references the CWQZ on the Property but makes no mention of wetlands existing on the Property.

In 2005, the City approved and released site development plans for the tract on the northside of the Property located at 1710 Evergreen Ave. (SP-04-0377C). The site development plans state there is no CEF located within 150' of 1710 Evergreen property. The southeast corner of 1710 Evergreen is less than 90 feet from where the Tributary enters the Evergreen Culvert and the CEF on the Property begins. See **Exhibits 3 and 7**.

The application, review comments and updates for the Garadi Plat recorded in 2013 do not mention a CEF being located on the Property.

The above referenced applications and the 2003 Holt Development Analysis did not detect the CEF. Either the CEF did not exist on the Property before the Evergreen Culvert project, or the design of the Evergreen Culvert caused the Tributary to not fully drain from the Property and led to the evolution of a wetland or a much larger wetland on the Property.

Even if artificially created, the CEF is not exempt from current City CEF regulations and the requested variances are needed. Nevertheless, how and when the CEF was created should be significant consideration in favor of granting the CEF related variances.

#### Proposed Modification of the Floodplain

The Applicant proposes to modify the floodplain on the Property to contain the 100-year storm event within a 50-foot wide open channel and to restore the riparian area within the 50' floodplain but outside of the bottom of the Tributary on the Property.

The proposed project would modify the Floodplain to a width of 50' from the centerline of the waterway by benching the eastern overbank. See Exhibits 3, 9, and 12. The proposed Floodplain modification would take place within a CEF setback because the entire site is within the 150' CEF setback. See Exhibit 9 and 10. Upon completion of the proposed Floodplain modification, the CQWZ would be 50' from the centerline of the waterway pursuant to §25-8-92(C)(1).

The Applicant requests approval of the variances to allow modification of the Floodplain within a CEF setback and the CWQZ. See **Exhibit 9 and 10**. The Applicant also requests a variance to reduce the CEF setback to 50' so that there is a single regulatory line protecting the waterway and the CEF and the remainder of the Property can be developed.

If the requested variances are granted, the Property would have approximately 33 feet of frontage on Evergreen Ave. outside of the modified 50' wide Floodplain, 50' CWQZ, and 50' CEF setback. With the Public Works Department waiver, a driveway can be constructed within the 25' between the edge of the ½ Critical Root Zone and the property line. See Exhibit 8.

The proposed channel design is consistent with previously approved modifications of floodplains within the Urban Watersheds. If the proposed floodplain modification is completed and the CWQZ and 100-year floodplain are limited to 50' from the center line of the tributary, the 50' wide Floodplain/CWQZ would contain approximately 14,069 square feet or approximately 42.8% of the net area of the Property (after dedication of 1,105 square feet for right of way for Evergreen Ave.). An estimated 18,000 square feet (54%) of the Property would be available for development. See **Exhibits 9 and 10**.

The proposed floodplain modification includes restoration and enhancement of the Tributary riparian area and protection of the CEF. See **Exhibit 15**.

#### Impact of Changing City Regulations

By Ordinance No. 010329-46, the City zoned the Property CS-MU-CO with the support of the Zilker Neighborhood Alliance. The staff report in the Council backup material for Case C14-01-0009 contains the following statement:

“According to flood plain maps, there is no flood plain within the project area.” See **Exhibit 22**, PDF Page 4.

The Applicant acquired the Property on August 15, 2002. In July 2003, the City sent the Applicant a Notice of Intent to Acquire the Property. See **Exhibit 17**. As part of the City's acquisition and appraisal process, the City retained Holt Planners to prepare a Development Analysis of the Property (“**Holt Report**”). See **Exhibit 20**. The Holt Report discusses the required fifty foot wide minimum CWQZ on the Property. See PDF page 14 of **Exhibit 20**. The Holt Report applied then current City Code which authorized administrative approval of floodplain modifications within the CWQZ of Urban Watersheds. The Holt Report concluded that the proposed Evergreen Live Work Lofts mixed-use project<sup>3</sup> could be constructed on the Property after the CWQZ is limited to fifty feet of width. See PDF pages 17-18 of **Exhibit 20**.

Under Section 25-8-261, no buildings or improvements can be constructed on the Property without the approval of the requested variances. CWQZ regulations prohibit the construction of a driveway onto Evergreen Ave. and modification of the Floodplain. See **Exhibit 3 and 16**. Likewise, without the requested CEF variances, the CEF setback also prohibits the construction of a driveway onto Evergreen and modification of the Floodplain. The existing defined channel is too narrow to contain runoff from large rain events. Under current conditions, runoff from large rain events will flow over the curb and flow onto Evergreen Ave. See **Exhibit 4**.

If the requested variances are denied, then no development may occur on the Property.

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<sup>3</sup> A preliminary site plan for the Evergreen Live Work Lofts project was submitted to the City in 2001 as part of a Development Assessment application



The scale of the project my client intends to construct on the Property has changed little since the 2001 Development Assessment after the re-zoning of the Property and the 2003 Holt Development Analysis. Unlike nearly all other development in the drainage basin of this tributary, the proposed project will maintain an open channel for the Tributary, enhance the riparian area, provide water quality treatment, and protect the wetlands CEF.

### Staff Recommendations

As of the date of this letter I have not seen the staff report or recommendations regarding the requested variances. Based on prior discussions and communications with staff, I expect staff will not make a recommendation regarding the findings of fact on “reasonable use” and “minimum deviation from code requirements.” If staff does not make recommendations on these two findings of fact, please consider the following:

1. The size, location, and configuration of the Property limits the amount of tweaking that can be done to achieve minimum deviation from code requirements.
2. The Property constitutes less than one percent of the fully developed watershed of the Tributary. Even if minimum deviation could be achieved, the environmental benefit would be undetectable in the context of the watershed.
3. The City Council determines the appropriate use of property through zoning. The Property is zoned CS-MU-CO.
4. In 2020, the City Council rezoned approximately 1.3 acres located at the intersection of Mary Street and Evergreen to CS-MU and GO-MU-H. The historic house the Evergreen project intended to protect is located on the 1.3-acre tract.
5. The 2020 rezoning of the adjacent property indicates that the City Council still considers mixed-use development the reasonable use of land in this area, including the Property.


Land Use Commission  
City of Austin  
January 8, 2023  
Page 7

On behalf of the Applicant, I respectfully ask for the approval of the requested variances.

Please let me know if you have any questions.

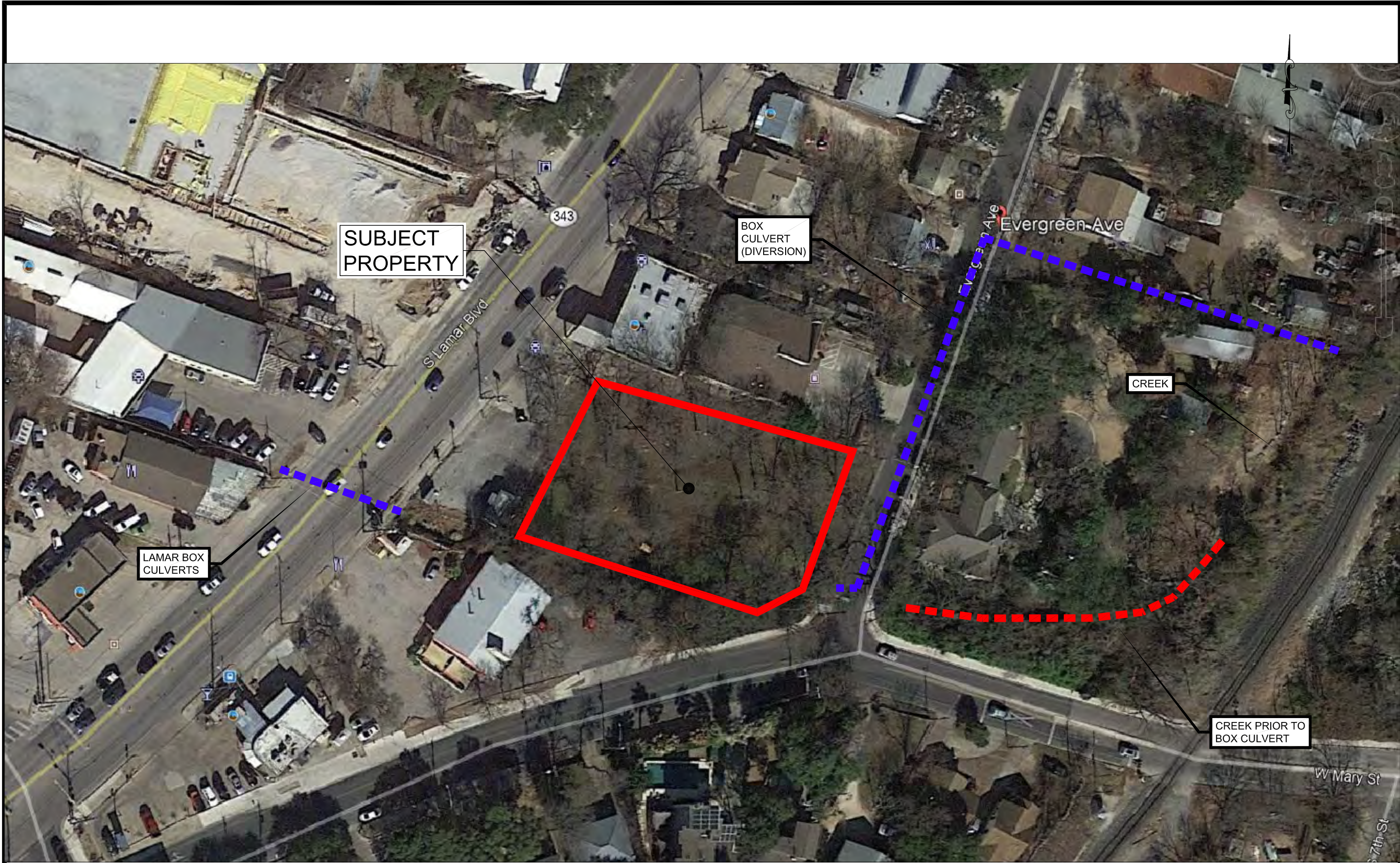
Very truly yours,

SNEED, VINE & PERRY,  
A PROFESSIONAL CORPORATION

By:   
Robert J. Kleeman

Cc: Robert Easter  
Ric Thompson





DRWN BY	JEH
DATE:	February, 2021
JOB NO.:	1472

**EVERGREEN CHANNEL  
MODIFICATION**  
1800 EVERGREEN AVE., AUSTIN, TX

**THOMPSON LAND ENGINEERING, LLC**  
Land Planning, Site Design, Subdivision Engineering  
904 N. Cuernavaca, Austin, Texas 78733 (512-328-0002)

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EXHIBIT 01 - AERIAL





EXHIBIT 01b - AERIAL WITH TOPO

SHEET  
2 OF 19

DRWN BY JEH	DATE: February, 2021	JOB NO.: 1472
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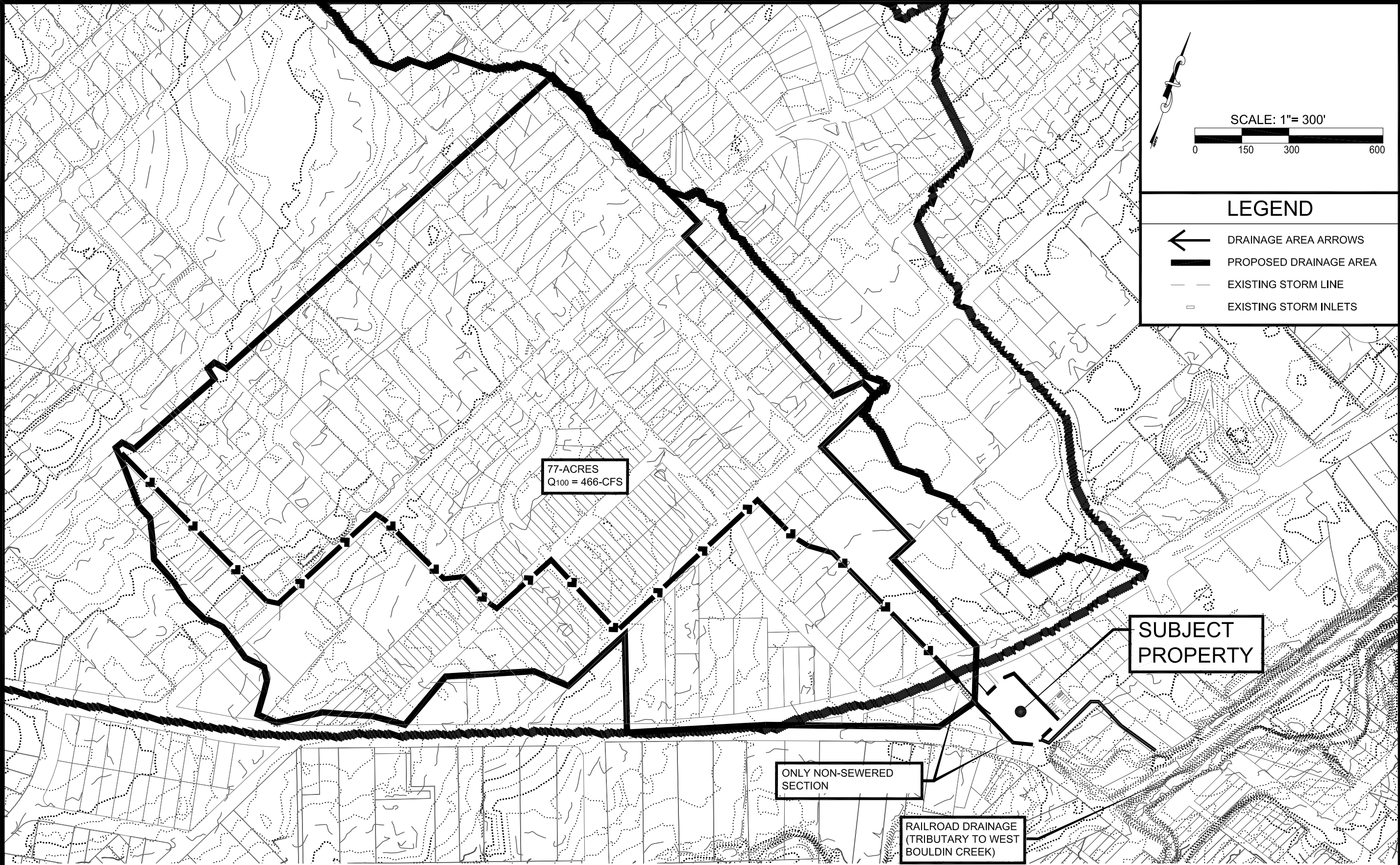
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SCALE: 1"= 300'

0 150 300 600

**LEGEND**

← DRAINAGE AREA ARROWS

▬ PROPOSED DRAINAGE AREA

--- EXISTING STORM LINE

□ EXISTING STORM INLETS

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EXHIBIT 02 - DRAINAGE AREA MAP

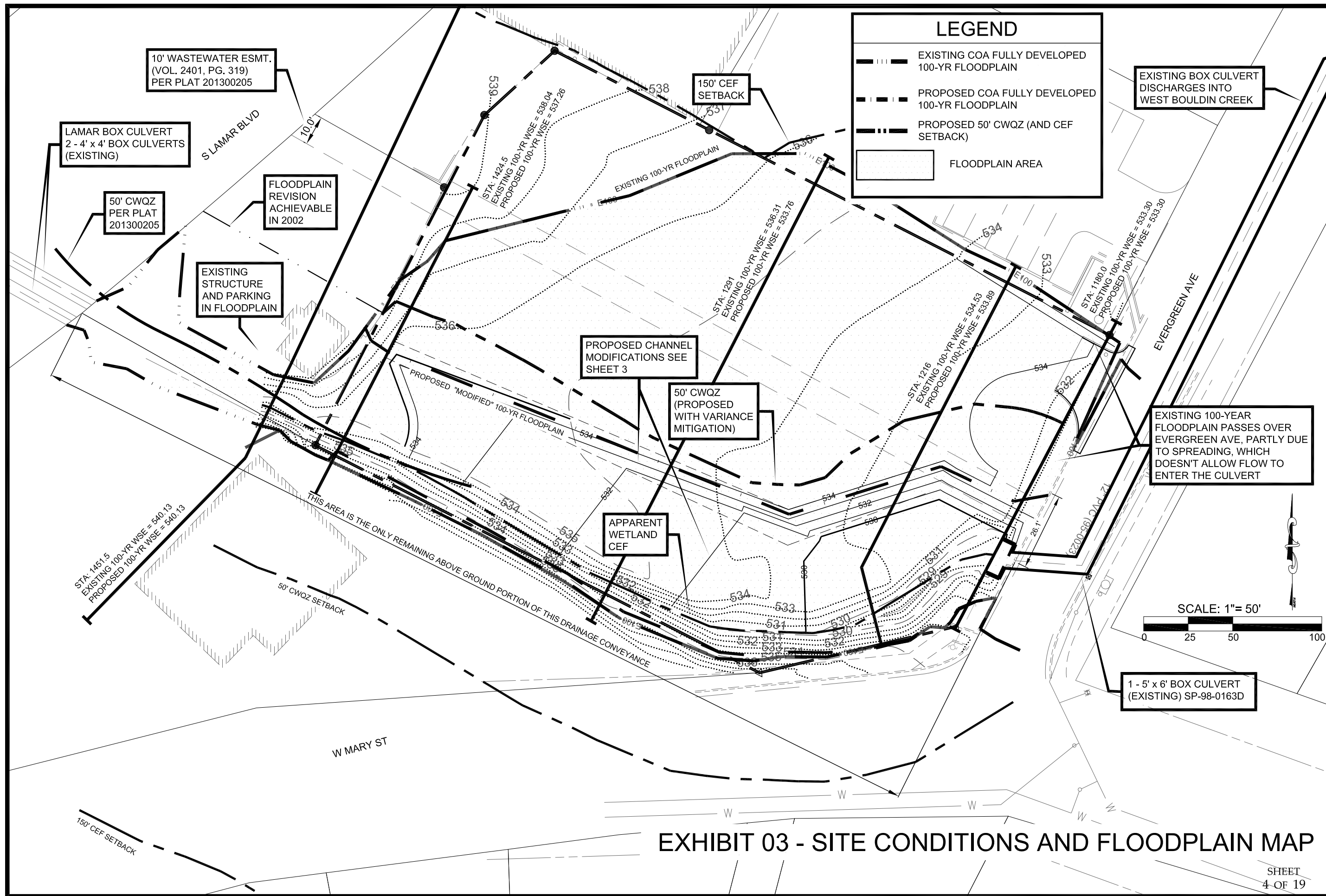


EXHIBIT 03 - SITE CONDITIONS AND FLOODPLAIN MAP

SHEET  
4 OF 19

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EXHIBIT 04 - EXISTING CONDITION PHOTO



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