



MEMORANDUM

TO: City of Austin Planning Commission

From: John Clement, Environmental Conservation Program Manager
Watershed Protection Department

Through: Katie Coyne, AICP, Certified Ecologist – ESA
Environmental Officer and Assistant Director
Watershed Protection Department

DATE: April 20, 2023

PROJECT: Evergreen Drainage Improvements SP-2022-0056D (W/R SP-2020-0148D)

REQUEST: Variance from LDC 25-8-261(G) to allow floodplain modification for development within the Critical Water Quality Zone (CWQZ).

At the direction of the Planning Commission, staff has worked with the applicant to develop a set of conditions for consideration of a variance to LDC 25-8-261(G) for floodplain modification within the Critical Water Quality Zone. Staff has determined that a second requested variance, to LDC 25-8-281 for impacts to a wetland Critical Environmental Feature, is no longer needed as a mitigation plan compliant with LDC 25-8-281 and LDC 25-8-282 has been provided by the applicant.

Staff cannot recommend a variance without a consolidated site plan showing that the necessary Findings of Fact as required by LDC 25-8-41 (see attachment) have been met. However, staff is providing a set of recommendations to the Commission that may reduce the potential for unforeseen environmental impacts from a future project on this site while also addressing the Commissioners' stated concerns regarding the development and permitting challenges surrounding this site. Please note that the site plan associated with the variance is a D site plan, which shows a proposed floodplain modification and associated restoration. D site plans only allow for construction to occur and do not allow for the establishment of use. Therefore the variance is not associated with housing. The Findings of Fact do not consider proposed uses and a future development would not be required to propose housing. The property is zoned CS-MU-CO.

Staff evaluation of the findings and our recommendations for variance conditions can not consider other site plan elements outside of this reviewer's purview that are typically evaluated with a consolidated site plan. This includes, for example, water quality and detention requirements, potential impacts to protected trees and heritage trees, relocation of utilities, and access for fire and safety. If a variance is granted, it will not waive any other elements of code that may restrict future development of the site.

If the Planning Commission elects to grant the variance, staff recommends the following conditions:

- The applicant shall provide the approved wetland and floodplain mitigation negotiated with staff
- No future development will occur within the CWQZ or wetland mitigation area with the exception of stormwater outfalls. Wastewater infrastructure and easements cannot be placed within the CWQZ.
- Any stormwater outfalls associated with future development will be designed to minimize the risk of erosion and enhance baseflow.

cc: Elizabeth Johnston, Deputy Environmental Officer, Watershed Protection Department

Attachment

Attachment 1: Findings of Fact

§ 25-8-41 LAND USE COMMISSION VARIANCES.

- (A) It is the applicant's burden to establish that the findings described in this Section have been met. Except as provided in Subsections (B) and (C), the Land Use Commission may grant a variance from a requirement of this subchapter after determining that:
- (1) the requirement will deprive the applicant of a privilege available to owners of other similarly situated property with approximately contemporaneous development subject to similar code requirements;
 - (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;
 - (b) is the minimum deviation from the code requirement necessary to allow a reasonable use of the property; and
 - (c) does not create a significant probability of harmful environmental consequences; and
 - (3) 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 Quality Transition Zone*), Section 25-8-452 (*Water Quality Transition Zone*), Section 25-8-482 (*Water Quality Transition Zone*), Section 25-8-652 (*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;
 - (2) the requirement for which a variance is requested prevents a reasonable, economic use of the entire property; and
 - (3) the variance is the minimum deviation from the code requirement necessary to allow a reasonable, economic use of the entire property.
- (C) The Land Use Commission may not grant a variance from a requirement of Article 13 (*Save Our Springs Initiative*).
- (D) The Land Use Commission shall prepare written findings of fact to support the grant or denial of a variance request under this section.

Source: Section 13-2-505; Ord. 990225-70; Ord. 010607-8; Ord. 030508-60; Ord. 031211-11; Ord. 20131017-046; Ord. No. 20140626-113, Pt. 19, 7-7-14 ; Ord. No. 20170615-102 , Pt. 10, 6-15-17.



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 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 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 provided a consolidated site plan indicating the economic use of the property.

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 consolidated site plan 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)

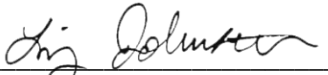
Date: 4/20/2023

Environmental
Conservation Program
Manager (WPD)


(John Clement)

Date: 4/20/2023

Deputy Environmental
Officer (WPD)


(Liz Johnston)

Date: 4/20/2023

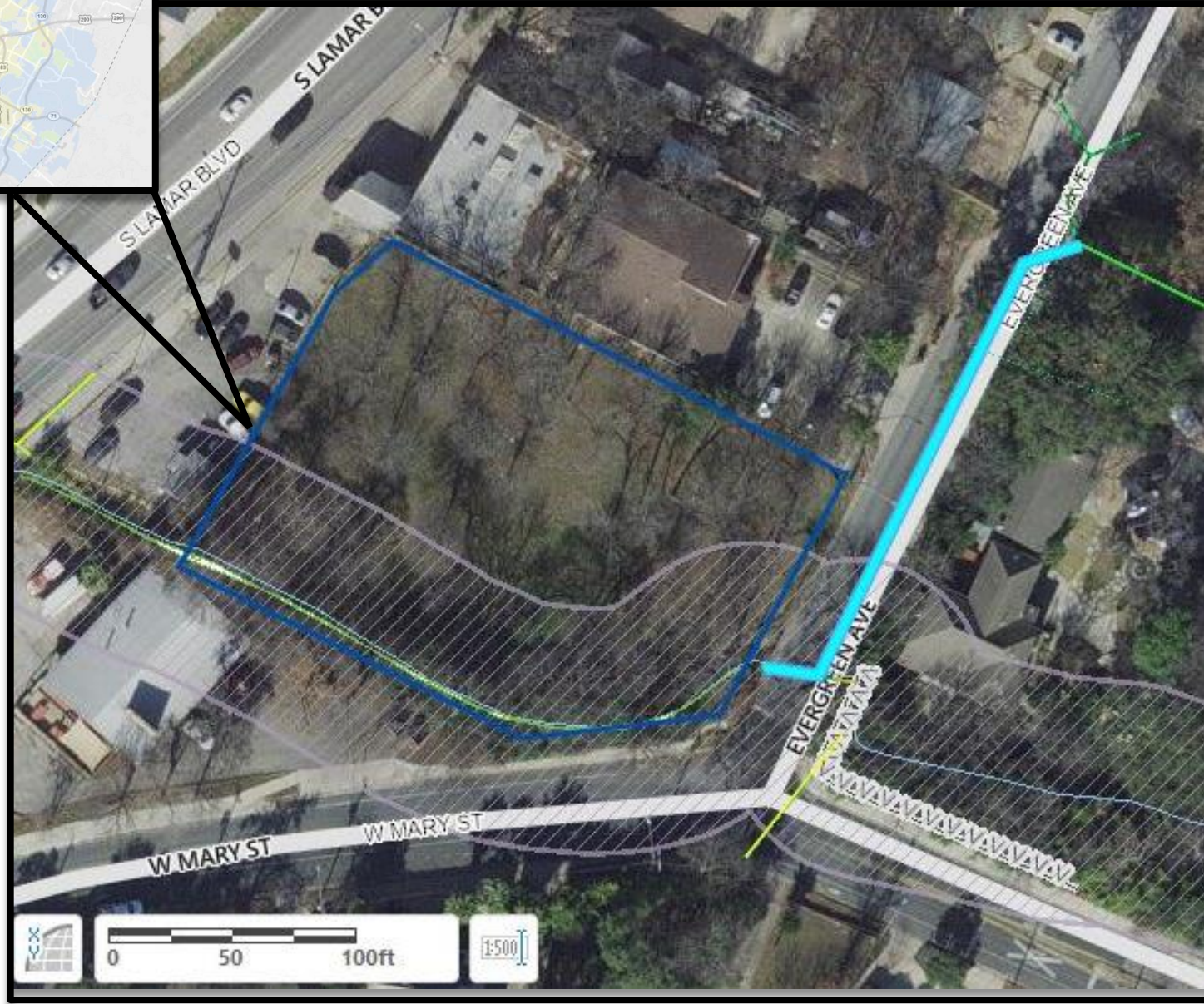
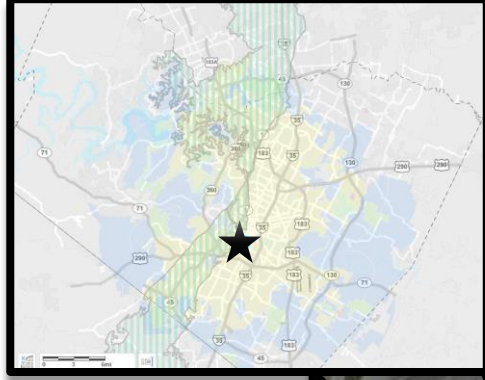
John Clement
Environmental
Conservation Program
Manager
WPD

EVERGREEN DRAINAGE IMPROVEMENTS

1800 1/2 EVERGREEN AVE, 78704
SP-2022-0056D

PROPERTY DATA

- West Bouldin Creek Watershed
- Urban Classification
- Desired Development Zone
- Council District: 9
- Environmental features:
 - Critical Water Quality Zone
 - Wetland CEF
 - Rimrock CEF
- Infrastructure:
 - Drainage Pipe



VARIANCE REQUESTS

§ 25-8-261 (G) – CRITICAL WATER QUALITY ZONE DEVELOPMENT

Floodplain modifications prohibited in the CWQZ unless one of the exemptions is met.

1. The variance request is to allow floodplain modification for development within the CWQZ.

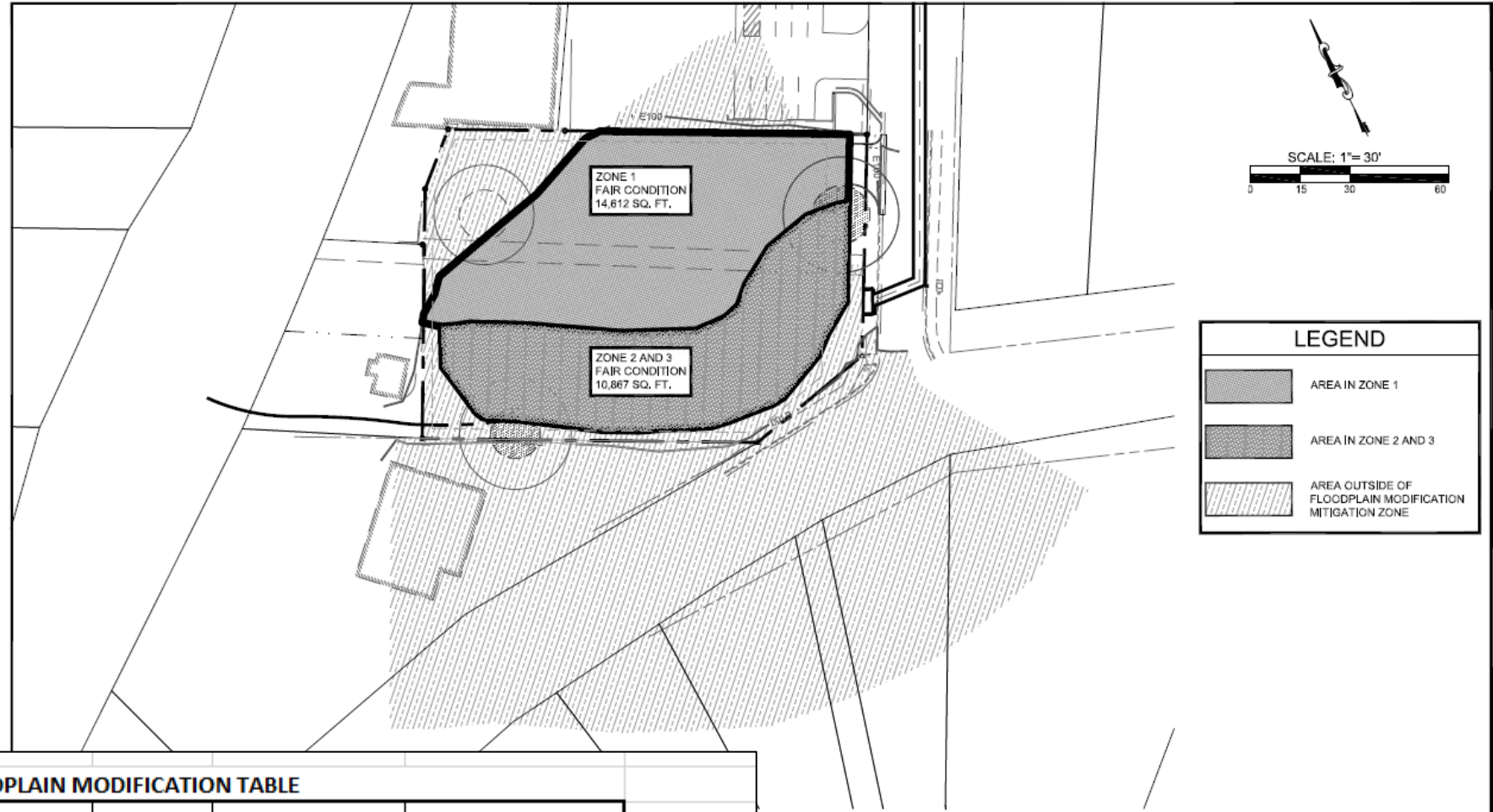
~~§ 25-8-281 (C)(1)(a) and § 25-8-281 (C)(2)(b) – CRITICAL ENVIRONMENTAL FEATURES~~

~~CEF setback reduction and construction within 150' CEF setback prohibited unless 1:1 mitigation is provided.~~

- ~~2. The variance request is to reduce the CEF setback to 50' and to allow construction within the reduced 50' CEF setback~~

VARIANCE REQUEST

Applicant will pay into the Riparian Zone Mitigation Fund



FLOODPLAIN MODIFICATION TABLE					
	Area (sq ft)	Area (ac)	Condition	Restoration/ Mitigation Ratio	Restoration/ Mitigation Area (ac)
CWQZ (Zone 2 and 3)	11,655	0.27	fair	6	1.61
Non-CWQZ (Zone 1)	15,459	0.35	fair	3	1.06
					2.67
					\$103,271.88
				Total acres	
				Total cost	

FLOODPLAIN MODIFICATION MITIGATION EXHIBIT

SHEET
1 OF 1

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

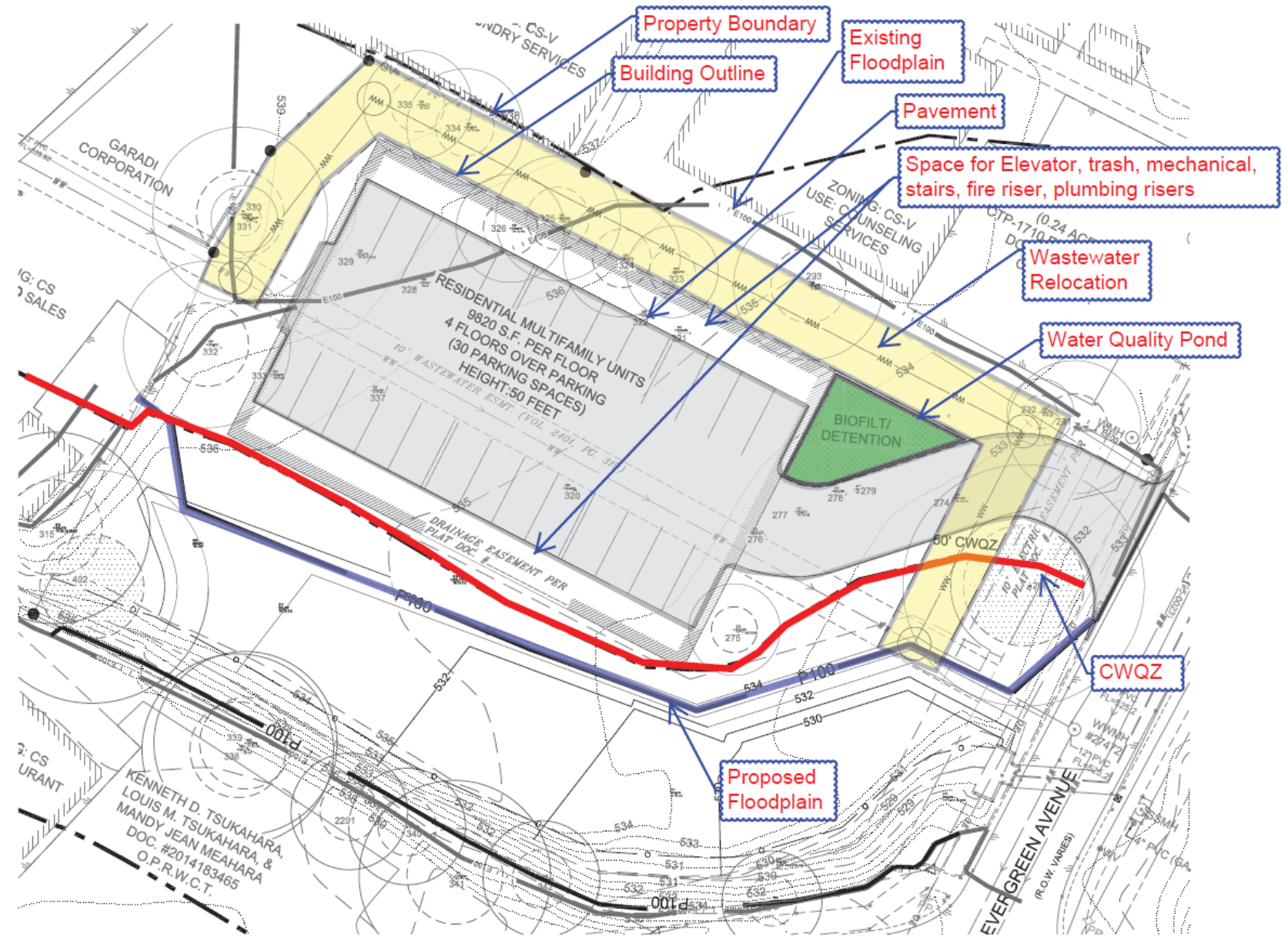
**EVERGREEN CHANNEL
MODIFICATION**
 1800 EVERGREEN AVE., AUSTIN, TX

THOMPSON LAND ENGINEERING, LLC
 Land Planning, Site Design, Subdivision Engineering
 904 N. Cuernavaca, Austin, Texas 78733 (512-328-0002)
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§ 25-8-281
Applicant has
developed a
mitigation plan
that provides 1:1
in-kind mitigation

Total CEF Buffer Impacted:		29,145 sf	
	Mitigation Provided (sf)	Mitigation Factor	Equivalent Mitigation (sf)
Buffer Mitigation	2,590	1	2,590
Wetland Mitigation	7,291	4	29,164
Total In-Kind			31,754





CAVEATS

- Applicant has provided baseline mitigation for floodplain modification and wetland CEF impacts. I.e., comparable to what is required to allow the impacts administratively.
- It is not clear whether future development of the site will meet findings in terms of:
 - Minimum departure necessary to allow a reasonable economic use
 - Minimizing risk of harmful environmental consequences
- If a variance is granted, it will not waive any other elements of code that may restrict future development of the site. This would include
 - Water quality and detention
 - Tree protection
 - Relocation of utilities
 - Fire and safety

STAFF RECOMMENDATIONS

- Staff cannot recommend approval as Findings of Fact cannot be met without a consolidated site plan showing all proposed development
- However, staff has recommended conditions should the commission elect to approve the variance:
 - The applicant shall provide the approved wetland and floodplain mitigation negotiated with staff
 - No future development will occur within the CWQZ or wetland mitigation area with the exception of stormwater outfalls. Wastewater infrastructure and easements cannot be placed within the CWQZ.
 - Any stormwater outfalls associated with future development will be designed to minimize the risk of erosion and enhance baseflow.

THANK YOU

Questions?

