

### ITEM FOR ENVIRONMENTAL COMMISSION AGENDA

COMMISSION MEETING DATE:	October 18, 2023	
NAME & NUMBER OF PROJECT:	QuikTrip No. 4141 SP-2022-0407D	
NAME OF APPLICANT OR ORGANIZATION:	Jason Bass, Halff Associates	
LOCATION:	12500 FM 969 Road, Austin, TX 78724	
COUNCIL DISTRICT:	NA	
ENVIRONMENTAL REVIEW STAFF:	Pamela Abee-Taulli, Environmental Program Coordinator, DSD, 512.974.1879, pamela.abee-taulli@austintexas.gov	
WATERSHED:	Elm Creek, Suburban Watershed, Desired Development Zone	
<b>REQUEST:</b>	<ul> <li>Variance request is as follows: To vary from LDC <ul> <li>25-8-302(A)(2) to allow parking areas on slopes in excess of 15 percent;</li> <li>25-8-342 to allow fill greater than 4 feet, to 8 feet, on a slope greater than 15 percent;</li> <li>25-8-341 to allow cut greater than 4 feet, to 13 feet.</li> </ul> </li> </ul>	
STAFF Recommendation:	Staff recommends this variance, having determined the findings of fact to have been met.	
STAFF CONDITION:	<ul> <li>Onsite Rain garden</li> <li>Landscaping (Landscaping is not required in the ETJ.)</li> <li>The addition of 51 native/adapted trees to the site.</li> <li>The addition of 486 native/adapted shrubs to the site.</li> <li>The replacement of all Bermuda sod with 609S seeding</li> </ul>	

• The replacement of all Bermuda sod with 609S seeding.



### Development Services Department Staff Recommendations Concerning Required Findings

Project Name:	QuikTrip No. 4141
Ordinance Standard:	Comprehensive Watershed Ordinance
Variance Request:	<ul> <li>To vary from LDC</li> <li>25-8-302(A)(2) to allow parking areas on slopes in excess of 15 percent;</li> <li>25-8-342 to allow fill greater than 4 feet, to 8 feet, on a slope greater than 15 percent;</li> <li>25-8-341 to allow cut greater than 4 feet, to 13 feet.</li> </ul>

- A. Land Use Commission variance determinations from Chapter 25-8-41 of the City Code:
  - 1. The requirement will deprive the applicant of a privilege or the safety of property given to owners of other similarly situated property with approximately contemporaneous development;
    - Yes / No The variance will not be providing a special privilege to the applicant. The proposed development is similar to other developments on sites that are constrained by areas of high erosion that cannot be avoided and must be filled in.

#### 2. The variance:

- *a*. Is not based on a condition caused by the method chosen by the applicant to develop the property, unless the development method provides greater overall environmental protection than is achievable without the variance;
  - Yes / No The variance is not required due to the method chosen by the applicant to develop the property. The variance is necessitated by
    - the deep erosion in the waterway, which has created the steep slopes on which development is restricted.
    - The depth of the eroded waterway that must be filled in order to achieve reasonable use of the property.
    - The cut needed to create positive flow for the drainage bypass channel.

Greater overall environmental protection may be achieved than would have been proposed without this variance through the addition of an onsite rain garden and of landscaping, which is not required in the ETJ. Bermuda grass sod will be replaced with 609S native seeding. Also, 51 native/adapted trees and 486 native/adapted shrubs will be planted.

- *b.* Is the minimum change necessary to avoid the deprivation of a privilege given to other property owners and to allow a reasonable use of the property; and
  - Yes / No The lot is constrained by a narrow area of high erosion in the middle of a narrow lot. The site has been designed to avoid grading in steeply sloped areas to the extent practicable.
- c. Does not create a significant probability of harmful environmental consequences; and
  - Yes / No The site plan for this development meets the requirements for water quality and detention. A rain garden has been added to the plans, and native landscaping is proposed. All cut/fill will be structurally contained, minimizing the potential for erosion. The proposal does 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.
  - Yes / No The water quality pond is designed to meet current code requirements. Additionally, a full filtration rain garden and native landscaping have been added to the design.
- The Land Use Commission may grant a variance from a requirement of Article 7, Division 1 (Critical *Water Quality Zone Restrictions*), after determining that:
- B. Additional Land Use Commission variance determinations for a requirement of Article 7, Division 1 (Critical Water Quality Zone Restrictions):
  - 1. The criteria for granting a variance in Subsection (A) are met;

### <u>N/A</u>

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

#### <u>N/A</u>

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

### <u>N/A</u>

<u>Staff Determination:</u> Staff determines that the findings of fact have been met. Staff recommends the following conditions:

Onsite Rain garden

Landscaping (Landscaping is not required in the ETJ.)

- The addition of 51 native/adapted trees to the site.
- The addition of 486 native/adapted shrubs to the site.
- The replacement of all Bermuda sod with 609S seeding.

Environmental Reviewer (DSD)	(Pamela Abee-Taulli)	Date: 9/28/23
Environmental Review Manager (DSD)	(Mike McDougal)	Date 9-29-23
Deputy Environmental Officer (WPD)	(Liz Johnston)	Date 09/29/23

David J. Anderson direct dial: (512) 807-2908 danderson@drennergroup.com

# **DRENNER** GROUP

August 18, 2023

Ms. Mel Fuechec Environmental Reviewer Development Services Department City of Austin 6310 Wilhelmina Delco Dr. Austin, TX 78752

#### Re: Environmental Variance Request for SP-2022-0407D

Dear Ms. Fuechec:

On behalf of my client QuikTrip Corporation, I submit this variance request letter for your thoughtful consideration.

QuikTrip #4141 is proposed to be constructed on 5.00 acres on the northeast corner of Farm-to-Market (FM) 969 and State Highway (SH) 130, which will include fuel service and a convenience store along SH 130, which was constructed to relieve Interstate and other regional highways within the Austin City Limits of heavy truck traffic, which causes congestion and contributes significantly to dangerous ozone levels within the City periodically.

The variances requested include:

- 30-5-341: Request cut above 8 feet: This Land Use Commission variance request includes request includes approximately 4,684 square feet of cut above 8'-12' for a required drainage bypass channel. This represents 2.15% of the entire site area.
- 30-5-342: Requesting fill above 4 feet outside of a water quality control or detention facility on a slope > 15%. This Land Use Commission variance request includes approximately 2,688 square feet of fill above 4' on a slope >15%. This represents 1.23% of the entire site area.
- 30-5-302(A)(2): Requesting parking area on slopes > 15%. This Land Use Commission variance request includes approximately 5,017 square feet of parking lot construction on slopes greater than 15%. This represents 2.3% of the total site area.

There are only two (2) such gas stations directly on SH 130 between SH 45 in Pflugerville and SH 71, so the pool from which to evaluate "similarly situated property with approximately contemporaneous development subject to similar code requirements" is extremely small.

- The QuikTrip at Pecan Street and SH 130 is in the jurisdiction of the City of Pflugerville, and thus cannot be compared to QuikTrip #4141 location. This location also does not offer truck fueling.
- Therefore, there is only one (1) facility of contemporaneous development in this area abutting SH 130 (which is important because of TXDOT limitations on access to the site, and thus, configuration of the site), but this facility 1) does not service tractor trailers; 2) was evaluated as an administrative site plan; 3) was approved in 2014 under current watershed rules (as opposed to this site, which is being evaluated under Comprehensive Watershed Ordinance rules); and 4) does not contain appreciable drainage features on the site.

The attached Environmental Commission Variance Application Form provides the necessary justification for our request, but in summary:

- The code requirements DO deprive the applicant of a privilege available to owners of similarly situated property with approximately contemporaneous development subject to similar code requirements.
- The variance requests are 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.
- The proposed project IS the minimum deviation from the code requirement necessary to allow a reasonable use of the property.
- The proposed project DOES NOT create a significant probability of harmful environmental consequences.
- Development with the variance WILL result in water quality that is at least equal to the water quality achievable without the variance.

Thank you for your prompt attention to this matter. Please feel free to call me (512.807.2908) or email me (danderson@drennergroup.com) if you have any questions.

Yours truly,

David J. Anderson, P.E., D.WRE, CFM, CPESC Director of Land Use and Entitlements Drenner Group, P.C.



### **ENVIRONMENTAL COMMISSION VARIANCE APPLICATION FORM**

### **PROJECT DESCRIPTION Applicant Contact Information**

Name of Applicant	David Anderson on behalf of QuikTrip Corporation
Street Address	2705 Bee Caves Rd, Suite 100
City State ZIP Code	Austin, TX 78746
Work Phone	512.807.2908
E-Mail Address	danderson@drennergroup.com
Variance Case Information	
Case Name	QuikTrip Store #4141
Case Number	SP-2022-0407D
Address or Location	12500 FM 969 Road, Austin, TX 78724
Environmental Reviewer Name	Mel Fuechec
Environmental Resource Management Reviewer Name	Mel Fuechec
Applicable Ordinance	1986 Comprehensive Watershed Ordinance
Watershed Name	Elm Creek
Watershed Classification	□Urban✓ Suburban□Water Supply Suburban□Water Supply Rural□ Barton Springs Zone

Edwards Aquifer Recharge Zone	<ul> <li>□ Barton Springs Segment</li> <li>□ Northern Edwards Segment</li> <li>✓ Not in Edwards Aquifer Zones</li> </ul>
Edwards Aquifer Contributing Zone	□ Yes ✓ No
Distance to Nearest Classified Waterway	2,021 ft downstream of the site to a point that drains 320 acres of contributing drainage area per CWO Section 13-15-262.
Water and Wastewater service to be provided by	Wastewater service proposed as septic Water service to be provided by Manville Water Supply Corporation
Request	The variance request is as follows (Cite code references): 30-5-341: Requesting cut above 8 feet 30-5-342: Requesting fill above 4 feet outside of a water quality control or detention facility on a slope > 15% 30-5-302(A)(2): Requesting parking area on slopes > 15%

	Existing	Proposed
square footage:	_0.00	_112,329_
acreage:	_0.00	2.579
percentage:	0.00	51.6
Provide general description of the property (slope range, elevation range, summary of vegetation / trees, summary of the geology, CWQZ, WQTZ, CEFs, floodplain, heritage	The Site and surrounding area are located w Creek is located approximately 0.3 mile sout Trinity subcrop. Elm Creek discharges east; a According to the Texas Commission on Envir Aquifer Viewer map, the Site is not located w Zone, Transition Zone, or Contributing Zone. SH 130 was recently constructed and drainar this tract, were installed along SH 130 and F isolate area drainage patterns and now prov surface water flows. Slope: The Site has an overall gradual gradie with slope of between 2% and 3%. Maximum site is approximately 448 MSL, while the out 426 MSL (at the bottom of the receiving drain a bluff or canyon rimrock were observed at the Drainage: A shallow, ephemeral stream inter discrete segments of the banks that are smal but they are steep. However, these isolated tract's topography and will not represent an property.	h of the Site in an area mapped as away from the Edwards Aquifer. ronmental Quality (TCEQ) Edwards within the Edwards Aquifer Recharge ge ditches, located south and west of M 969. These ditches appear to ide additional routes for removal of ent sloping downward to the south m elevation at the north end of the let to the site lies at approximately inage ditch). No features representing the Site. rsects the Site with isolated and all, one can step in and out of them, areas are not representative of the



Soils. This area is near the Colorado River and soils tend to consist of old alluvial deposits of the river. Area soils are clay soils in lower areas grading to loamy soils then to sandy and gravely soils typically on uplands. The southern portion of this tract consists of Hornsby gravely loamy sand which grade into Wilson clay loam and Houston Black clay in the northern portions of the tract. Houston Black clay only occurs along eastern boundary of this tract. Vegetation. Hornsby soils on the southern portion of the tract are left in a woodlot and likely are associated with a structure removed from that area. Other remaining features are a well (which has since been plugged, see STATE OF TEXAS PLUGGING REPORT #21308) and a water storage cistern. This area is vegetated with a relatively open woodland consisting of largely cedar elm with some Texas sugarberry. A small tributary of Elm Creek, located south of FM 969, is reported to drain this area. However, no defined channels are located on this tract. Understory vegetation consists largely of grasses and forbes with occasional seedlings and shrubs. Many of these plants are associated with the South Texas plains and include pencil cactus, Mexican persimmon, gum Bumelia, Parkinsonia, honey mesquite, and lotebush Condalia. The area north of Hornsby soils is open and until recently was used either as improved pasture or hay fields. Since release from use much of the area supports areas of giant ragweed and invasive woody plants including honey mesquite and Parkinsonia. Critical Environmental Features: No features located on this tract are considered protected under the City of Austin's LDC. The previous agricultural use and lack of geologic features is evident and future development of this tract will have little adverse impact on natural features protected under the code. Water Quality Transition Zone: Water Quality Transition Zones described in the ordinance are associated with Critical Water Quality Zones which are not present at the Site based on the applicable rules under which the proposed development is being evaluated. Critical Water Quality Zone: The 2010 Comprehensive Watershed Ordinance defines a minor waterway as having a drainage area of at least 320 acres and not more than 640 acres. Based on the current City of Austin Property Profile, the Site is associated with a drainageway that is not more than 320 acres in drainage area. Flood Plain: Based on the current Federal Emergency Management Agency (FEMA) Flood Rate Insurance Map (FIRM), the Site is not located within a special flood hazard area.

	The site requests Land Use Commission variances from the above- referenced sections of the 2010 Land Development Code, the Code applicable to this project.
Clearly indicate in what way the proposed project does not comply with current Code (include maps and exhibits)	<ul> <li>30-5-341: Requesting cut above 8 feet. This Land Use Commission variance request includes approximately 4,684 square feet of cut above 8'-12' for a required drainage bypass channel. <i>This represents 2.15% of the entire site area.</i></li> <li>30-5-342: Requesting fill above 4 feet outside of a water quality control or detention facility on a slope &gt; 15% This Land Use Commission variance request includes approximately 2,688 square feet of fill above 4' on a slope &gt; 15%. <i>This represents 1.23% of the entire site area.</i></li> </ul>
	<b>30-5-302(A)(2): Requesting parking area on slopes &gt; 15%</b> This Land Use Commission variance request includes approximately 5,017 square feet of parking lot construction on slopes greater than 15%. <i>This represents 2.3% of the total site area.</i>

### **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: QuikTrip Store #4141

Ordinance: See above.

- 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.



State Highway 130 was constructed to relieve Interstate and other regional highways within the Austin City Limits of heavy truck traffic, which causes congestion and contributes significantly to dangerous ozone levels within the City periodically. QuikTrip #4141 is being constructed to provide fueling options for this highway.

There are only two (2) such gas stations directly on SH 130 between SH 45 in Pflugerville and SH 71, so the pool from which to evaluate "similarly situated property with approximately contemporaneous development subject to similar code requirements" is extremely small.

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The QuikTrip at Pecan Street and SH 130 is in the jurisdiction of the City of Pflugerville, and thus cannot be compared to QuikTrip #4141 location. This location also does not offer truck fueling.

Therefore, there is only one (1) facility of contemporaneous development in this area abutting SH 130 (which is important because of TXDOT limitations on access to the site, and thus, configuration of the site), but this facility:

- Provides extremely limited service to tractor trailers;
- Was evaluated as an administrative site plan;
- Was approved in 2014 under current watershed rules (as opposed to this site, which is being evaluated under Comprehensive Watershed Ordinance rules); and
- Does not contain appreciable drainage features on the site.

As such, the request for the variances states herein does not deprive the applicant of privileges granted to other owners because there are no other owners developing similar facilities in this area. The site is uniquely challenged by a prohibited access area designated by TXDOT, the need for appreciable space for septic due to the lack of wastewater infrastructure in the area, and the presence of a "shallow, ephemeral stream that intersects a minor drainage feature" on the site – so minor that "one can step in and out of them" [APEX Environmental Consultants, *Response to City of Austin Environmental Assessment Supplement Request Proposed QuikTrip Store Number 4141 NEC of Webberville Rd and SH-130, Austin 2-Mile ETJ County Appraisal District Property ID: 707589, 2020*].

- 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;



The design decisions for QuikTrip #4141 have been dictated by site constraints and are not solely based on any decision made by the applicant. These include:

- TXDOT has prohibited access along the western boundary of the site as it parallels the State Highway 130, which required the layout provided on the site plan.
- There is an access easement running north-south on the western side of the property that is required for the abutting tract to the north to have access to public ROW.
- There is a need for appreciable space for a septic system on the site due to the lack of available wastewater infrastructure in the area.
- Regional drainage patterns, necessitated by the construction of SH 130, dictate how drainage flows from, and across, the site.

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 There is a "shallow, ephemeral stream that intersects a minor drainage feature" on the site – so minor that "one can step in and out of them" [APEX Environmental Consultants, *Response to City of Austin Environmental Assessment Supplement Request Proposed QuikTrip Store Number 4141 NEC* of Webberville Rd and SH-130, Austin 2-Mile ETJ County Appraisal District Property ID: 707589, 2020].

Therefore, the presence of the above factors defines a site with unique constraints and therefore a design configuration that is not based on design decisions made by the applicant.

The Applicant, after significant consultation with Environmental Staff, has revised the design to include the following items, which "provides greater overall environmental protection than is achievable without the variance":

- The building type has been changed, reducing the building footprint by 2,006 SF.
- The building footprint has also been shifted out of the area with preexisting slopes greater than 15%.
- The number of parking spots has been reduced by 3.
- The impervious cover on site has been reduced by 2,321 SF.
- A full-filtration rain garden has been added near the north edge of the parking lot.
- The landscaping has been significantly revised to include:
  - The addition of 51 trees to the site. These will be native species per Appendix F.
  - The addition of 486 shrubs to the site. These will be native species per Appendix N.
  - The replacement of all Bermuda sod with 609S seeding.

These changes have resulted in:

- The elimination of a Land Use Commission Variance from 30-5-302(B).
- The reduction in the area requiring a Land Use Commission Variance from 30-5-302 (A)(2) by 10%.
- b) Is the minimum deviation from the code requirement necessary to allow a reasonable use of the property;



The requested variances are the minimum deviation from the 2010 code requirement necessary to allow reasonable use of the property.

• 30-5-341: Requesting cut above 8 feet: This request encompasses only 2.15% of the total site area.

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- 30-5-342: Requesting fill above 4 feet outside of a water quality control or detention facility on a slope > 15%. This encompasses only 1.23% of the entire site area.
- 30-5-302(A)(2): Requesting parking area on slopes > 15%: This request encompasses only 2.06% of the total site area.
- c) Does not create a significant probability of harmful environmental consequences.



The site plan for the site meets the requirements for water quality and detention and does not create a significant probability of harmful environmental consequences.

The water quality pond is designed to meet current code requirements.

Further, fuel storage tanks are industry-leading from a spill prevention standpoint. The site will use double-wall fiberglass tanks with leak sensor, double-wall fiberglass pipe, transition and dispenser sumps with sensors, automatic tank sensors with alarms, and a tank gauge monitoring system in store.

From an energy conservation standpoint, QuikTrip #4141 will utilize:

- 100% LED outside and 95% LED inside.
- Refrigeration specs on new stores that gain a 20% reduction in energy use.
- A Building Management System to monitor, alarm, and control: lighting, heating/cooling, refrigeration, cooler-door anti sweats, and exhaust fans.

Two (2) hazardous material interceptors (HMIs) are present on the site that prevent any type of petroleum material from entering the water quality/detention system.

Finally, a full filtration rain garden has been added to the design, which the Applicant estimates will reduce TSS loading in the stormwater runoff by 550 lbs per year.

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

The site plan for the site meets the requirements for water quality and detention and will result in water quality that is at least equal to the water quality achievable without the variance.

All cut/fill will be structurally contained, eliminating the potential for erosion.

The water quality pond is designed to meet current code requirements.

A full filtration rain garden has been added to the design, which the Applicant estimates will reduce TSS loading in the stormwater runoff by 550 lbs per year.

The inclusion of 51 native trees, 486 native shrubs, and the replacement of sodded areas with 609S ground cover will also positively impact water quality on the site, which will result in superior water quality when compared to that achievable without the variance.

- 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 Not applicable

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

Yes / No Not applicable

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

Yes / No Not applicable

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

### **Exhibits for Commission Variance**

- Aerial photos of the site (Exhibit A)
- Site photos (Exhibit B)
- Aerial photos of the vicinity (Exhibit C)
- Context Map—A map illustrating the subject property in relation to developments in the vicinity to include nearby major streets and waterways (Exhibit D)
- 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. (Exhibit E)
- For cut/fill variances, a plan sheet showing areas and depth of cut/fill with topographic elevations. (Exhibit F)
- Site plan showing existing conditions if development exists currently on the property (Not applicable)
- 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 (Exhibit G)
- Environmental Map A map that shows pertinent features including Floodplain, CWQZ,
   WQTZ, CEFs, Setbacks, Recharge Zone, etc. (Not applicable)
- An Environmental Resource Inventory pursuant to ECM 1.3.0 (*if required by 25-8-121*) (Not applicable)
- Applicant's variance request letter (Exhibit H)









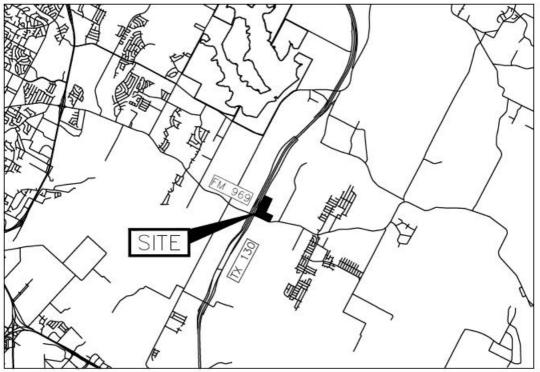






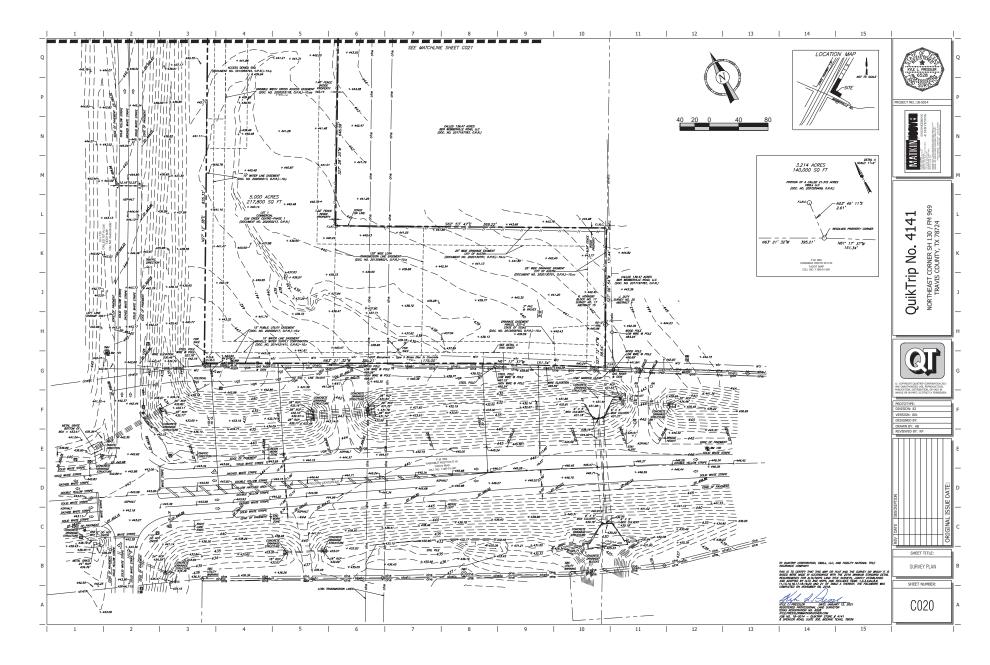


Exhibit D

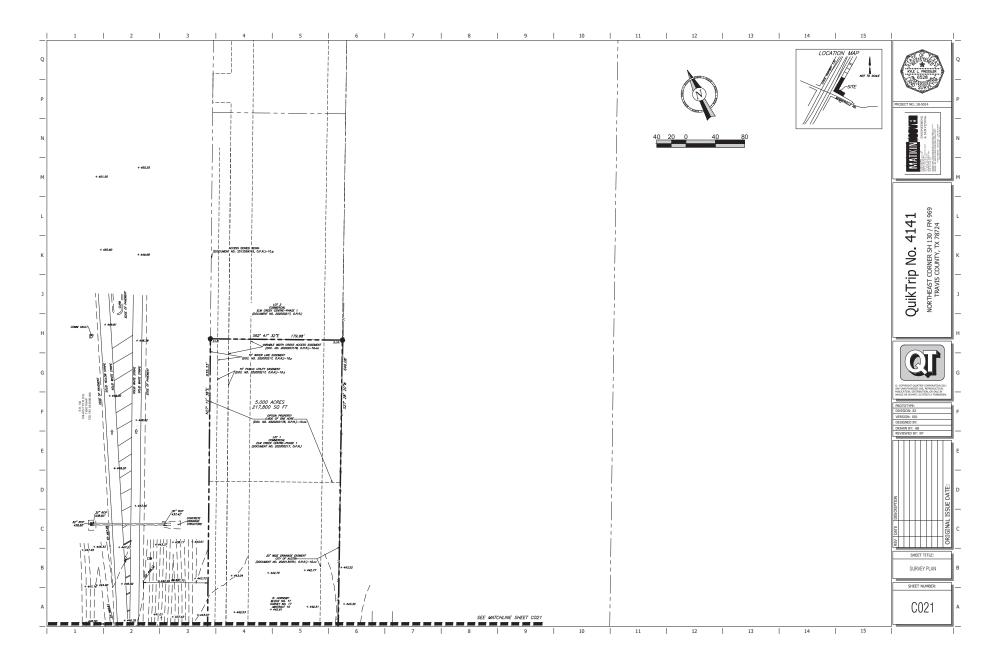


## Vicinity Map Page 24 of 28 Not to Scale

#### Exhibit E



#### Exhibit E (cont.)





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