

EXHIBIT**"A"**

CAUSE NO. C-1-CV-14-007201

THE CITY OF LEANDER

IN THE COUNTY COURT AT LAW

v.

NO. 2

GARY L. GROSS and
CATHY GROSS, *et al.*

TRAVIS COUNTY, TEXAS

MEDIATED SETTLEMENT AGREEMENT

As a result of mediation conducted on March 11, 2016, the City of Leander (Leander) and Gary L. Gross and Cathy Gross (together referred to as Gross) agree to resolve all issues in dispute between them in the above styled and numbered cause on the following terms and conditions:

1. Leander agrees to pay Gross the total sum of \$2,565,000.00 in complete settlement of any and all claims which have been made or which could have been made in this litigation or as a result of the events giving rise to this litigation, including but not limited to the value of the part taken, damages to the remainder, and all other costs and expenses.
2. Payment shall be in the form of a check or checks made payable to "Barron & Adler, Trustees" and delivered to the office of Gross' undersigned attorney within 45 days of the date the judgment described in paragraph 5 below is signed by the court and filed. Barron & Adler will distribute the funds to the appropriate parties.
3. The Commissioners' Award of \$1,724,620.00 has been placed in the registry of the Court, but has not been withdrawn by Gross. Gross may now withdraw those funds. That amount shall be credited against the \$2,565,000.00 described in paragraph 1 above and shall reduce the amount of the check(s) described in paragraph 2 above by that amount.
4. The covenants, conditions and restrictions (CCR) attached hereto as Exhibit A shall likewise be attached to and incorporated in the judgment described in paragraph 5 below.
5. An agreed judgment reflecting the terms of this agreement, including the CCR referred to in paragraph 4, shall be prepared by the attorney for Leander and delivered to the attorney for Gross for approval as to form, which approval will not be unreasonably withheld. Once approved, the agreed judgment will be presented to the Court for approval, signature, and filing at a hearing on the parties' joint motion for entry of judgment for which all parties named in the petition will be given proper notice.

6. Gross shall be solely responsible for paying all other persons or entities who have been served with citation and who claim an interest in the subject property.
7. The Grosses water line on the property being taken will be moved at Leander or its assign's expense to another suitable location.
8. Leander agrees to support the Gross' request for the BCRUA to execute a letter agreement in which the BCRUA and its successors and assigns agree to not seek to enforce the 1,000 foot restricted zone in 30 Tex. Admin. Code s. 290.41(e)(2)(B) so as to preclude Gross or its successors and assigns from installing a residential boat dock on their remainder property accessible by the public.
9. This agreement may be filed as a Rule 11 agreement.
10. The parties acknowledge that this agreement is subject to the approval of the Leander City Council.

Signed this 11th day of March, 2016.



Gary L. Gross



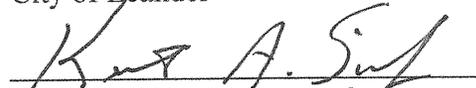
Cathy Gross



Christopher J. Oddo, Attorney for
Gary L. Gross and Cathy Gross



Wayne Watts, Authorized Representative
City of Leander



Kent Alan Sick, Attorney for
City of Leander

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

This Declaration of Covenants, Conditions and Restrictions (the “Declaration”) is made and entered into as of the _____ day of _____, 2016, by and between the City of Leander (“City”) and Gary L. Gross and Cathy L. Gross (“Gross”).

RECITALS

A. Gross is the owner of that 5.217 acre tract of land located in Travis County, Texas, and more particularly described in Exhibit A attached hereto (the “5.2 Acres”);

B. In an effort to settle the condemnation case styled *City of Leander vs. Gary L. Gross and Cathy L. Gross*, Cause No. C-1-CV-14-007201, pending in the Probate Court of Travis County, Texas, Gross has agreed to sell and the City has agreed to purchase the 5.2 Acres, provided that the City agrees that the herein described covenants, conditions and restrictions shall apply to the 5.2 Acres and shall be deemed covenants running with the land and shall be binding on the City and its successors and assigns;

C. The 5.2 Acres is out of a 21.911 acre tract of land owned by Gross and after Gross conveys the 5.2 Acres to the City, Gross will own the remaining 16.694 acres that is immediately adjacent to the 5.2 Acres. The 16.694 acres is described in Exhibit B attached hereto (the “16.6 Acres”);

D. The City acknowledges and agrees that Gross would not have conveyed the 5.2 Acres to the City without the City’s agreement to this Declaration and that the herein described covenants, conditions and restrictions shall apply to the 5.2 Acres.

RESTRICTIONS

Now, therefore for a good and valuable consideration received by each of the undersigned, the receipt and sufficiency of which are hereby acknowledged, the City and Gross hereby covenant and agree that the 5.2 Acres shall be subject to the following covenants, conditions and restrictions:

1. LAND ABOVE THE 722 CONTOUR.

1.1 That portion of the 5.2 Acres located on or above the 722-foot Mean Sea Level Contour (herein called the "Land Above the 722 Contour") shall be used only for the following purposes and for no other purposes:

- (a) The construction, operation, maintenance, repair, upgrade, and/or replacement of a single above-ground maintenance facility and necessary appurtenances thereto, that meets the requirements set out below in Paragraph 1.2 (the "Maintenance Facility");
- (b) Parking and access drives necessary for the Maintenance Facility and access to the deep water intake facility (the "Deep Water Intake") to be constructed adjacent to the 5.2 acres;
- (c) Temporary use for construction staging, storage, and uses incident to the City's (or its assigns') establishment of both the Maintenance Facility and the Deep Water Intake; notwithstanding anything herein to the contrary, it is agreed that all temporary materials and equipment of any kind placed on the 5.2 Acres during construction of the Maintenance Facility, the Deep Water Intake or other improvements permitted by this Declaration shall be removed by the City (or its assign) from the 5.2 Acres within 90 days after completion of such construction;
- (d) A ground water well or wells, or other water intake facility not to exceed fifty gallons per minute (50 GPM) and attendant pump to supply water to the Maintenance Facility solely for operational purposes, including facilitation of supply of pollutant controls to the Deep Water Intake and landscape irrigation if necessary;
- (e) Emplacement of underground pipelines to transport water for operational purposes associated with distribution of pollutant control materials to the Deep Water Intake to be constructed adjacent to the 5.2 acres;
- (f) Emplacement of underground electrical lines and/or aboveground transformers to facilitate operation of the Maintenance Facility, and also electrical and communication lines between the Maintenance Facility and the Deep Water Intake;
- (g) Emplacement of security measures such as access control systems, cameras, and reasonable and necessary appurtenances thereto; and
- (f) A fence that encloses the Maintenance Facility and meets the

requirements set out below in paragraph 1.3 (the "Upper Fence").

No other use of any kind shall be permitted on the Land Above the 722 Contour.

1.2 The Maintenance Facility building, which the City shall have the future right to expand if necessary, shall in no event ever exceed 3000 aggregate square feet in size exclusive of parking and access areas, whether as originally constructed or in the future expanded, and shall not exceed thirty-five (35) feet in height above the surface of the ground. It is agreed that the Maintenance Facility may have a single antenna, provided the antenna does not exceed thirty-five (35) feet in height above the surface of the ground. The outside walls of the Maintenance Facility shall be constructed entirely of brick, stone, EIFS, or similar material, with the exception of windows and doors, and its roof shall be constructed of tile, composition shingles, or non-reflective standing seam metal roof panels. No tin or shiny metal roof is permitted on the Maintenance Facility although a seamless colored metal roof is permitted. The Maintenance Facility shall be kept in a clean and well-maintained condition at all times at the expense of the owner or owners of the 5.2 Acres.

1.3 The Upper Fence shall not exceed 8 feet in height. If any outside feature of the Maintenance Facility has an industrial appearance, makes noise, or emits light, then the Upper Fence must be constructed of stone, brick, stucco, wood, or simulated wood or stone concrete panels. However, if the outside features of the Maintenance Facility do not have an industrial appearance, do not make noise, and do not emit light, then the Upper Fence shall be constructed of barbed wire, hog wire, stone, brick, stucco, wood, or simulated wood or stone concrete panels. In no event shall the Upper Fence be cyclone fencing or be made of exposed concrete blocks. The Upper Fence shall be kept in a clean and well-maintained condition at all times at the expense of the owner or owners of the 5.2 Acres. Section 5.5 of this Declaration is incorporated by reference as if restated herein with regards to the Maintenance Building, Upper Fence, or other improvements established upon the 5.2 Acres.

1.4 The Maintenance Facility and Upper Fence shall be set back (a) at least 50 feet from the common boundary of the 5.2 Acres and the 16.6 Acres, and (b) at least 50 feet from the northwestern boundary of the 5.2 Acres. The entire Maintenance Facility and Upper Fence shall be located on the Land Above the 722 Contour.

1.5 Lights may be placed only on the Maintenance Facility and the Upper Fence, however, such lighting shall be limited as follows: all lighting shall contain shields so as to cast the lighting downward and no lights shall be mounted high on poles to create widespread nighttime lighting. Except as specifically set out above, no other permanent outdoor lighting of any kind is permitted on any part of the 5.2 Acres.

2. LAND BELOW THE 722 CONTOUR.

2.1 There shall be no buildings, structures, roads, lighting or improvements of any kind located on that portion of the 5.2 Acres located below the 722-foot Mean Sea Level

Contour (herein called the “Land Below the 722 Contour”) except as provided herein.

2.2 The Land Below the 722 Contour shall be used only for the following purposes and for no other purposes:

- (a) The construction, operation, maintenance, repair, upgrade, and/or replacement of an underground pipeline or pipelines and necessary appurtenances thereto to convey pollutant control materials and water solely to facilitate operation of the Deep Water Intake that meet the requirements set out below in Paragraph 2.3;
- (b) The construction, operation, maintenance, repair, upgrade, and/or replacement of an underground line or lines necessary to provide electrical and data communication services between the Maintenance Building and the Deep Water Intake that meet the requirements set out below in Paragraph 2.3, all facilities emplaced pursuant to Secs 2.2(a) and (b) being referred to hereafter as “Underground Facilities;”
- (c) A single concrete or asphalt roadway (“Roadway”) extending from the Land Above the 722 Contour for purposes of constructing, accessing, maintaining, operating, repairing, upgrading, or replacing the Deep Water Intake or any facilities constructed by the City or its assigns on the 5.2 Acres that meets the requirements set out below in Paragraph 2.4;
- (d) Temporary use for construction staging, storage, and uses incident to the City’s (or its assigns’) establishment of both the Maintenance Facility and the Deep Water Intake, including clearing of whatever areas deemed necessary by the City or its assigns for effectuation of the Deep Water Intake, Maintenance Building, and appurtenances, or any future need for similar use in the event the Deep Water Intake or appurtenances thereto installed within the 5.2 Acres require maintenance, upgrade, repair, or replacement; notwithstanding anything herein to the contrary, it is agreed that all materials and equipment of any kind placed on the 5.2 Acres during construction of the Maintenance Facility, the Deep Water Intake or other improvements permitted by this Declaration shall be removed by the City (or its assign) from the 5.2 Acres within 90 days after completion of such construction;
- (e) Emplacement, operation, maintenance, repair, upgrade and replacement of security improvements for benefit of both the Maintenance Building and the Deep Water Intake, including but not limited to security cameras, electronic monitoring apparatus, and access control mechanisms, along with reasonable and necessary appurtenances thereto; and

- (f) Fencing surrounding the 5.2 Acres below the 722 Contour (the “Lower Fence”), and said fencing shall be constructed of barbed wire or hog wire; however, in no event shall the Lower Fence be cyclone fencing or exposed concrete blocks.

2.3 The Underground Facilities shall all be buried at least 1' feet below the surface of the ground. There shall be no aboveground appurtenances, boxes, facilities or lights for the Underground Facilities or the Roadway, other than at-grade manholes or other improvements necessary for construction or ongoing operation, maintenance, repair, upgrade, or replacement.

2.4 The Roadway shall not exceed 16 feet in width and shall be set back (a) at least 25 feet from the common boundary of the 5.2 Acres and the 16.6 Acres, and (b) at least 25 feet from the northwest boundary of the 5.2 Acres. The owner or owners of the 5.2 Acres (a) shall be solely responsible for the cost to construct and maintain the Underground Facilities and the Roadway, and (b) shall keep the Underground Facilities and the Roadway in a clean and well-maintained condition at all times.

3. PROHIBITED USES.

No part of the 5.2 Acres shall be used (a) for any public purpose except as specifically set out herein, or (b) for any recreational or park purposes; or (c) for any water supply reservoirs, towers, pumping plants or pumping facilities of any kind other than the pumps necessary to supply freshwater for operation of the Maintenance Facility’s purpose of providing pollutant controls to the Deep Water Intake; or (d) for any uses other than those specifically permitted by Paragraphs 1 and 2 above.

4. RESIDENTIAL NEIGHBORHOOD.

The City and any subsequent owner of the 5.2 Acres acknowledge and agree that the 5.2 Acres is located entirely within a residential neighborhood and that the architecture of the Maintenance Facility, Upper Fence, Lower Fence, Roadway, or appurtenances thereto will all be residential in character and compatible with other residential uses in the neighborhood.

5. GENERAL.

5.1 The City agrees that covenants, conditions and restrictions contained within this Declaration are covenants running with the land and shall be binding on the City, its successors and assigns and any subsequent owner or owners of the 5.2 Acres, for a term beginning on the date a fully executed counterpart of this Declaration is recorded in the Official Public Records of Travis County, Texas, and continuing through and including January 1, 2036, after which time this Declaration shall be automatically extended for six successive periods of five (5) years each, unless the Declaration is terminated by the written approval of all the owners of the 5.2 Acres and all the owners of the 16.6 Acres.

5.2 In the event the City, or its successors or assigns, violates any of the restrictions, covenants, or agreements contained herein, then any owner of all or any part of the 16.6 Acres may enforce these restrictions by injunctive relief and/or other applicable legal or equitable remedies.

5.3 It is agreed that the covenants, conditions and restrictions contained herein shall apply only to the 5.2 Acres and that no covenants, conditions or restrictions are being placed on the 16.6 Acres.

5.4 This Declaration may be amended only with the express written consent of all the owners of the 5.2 Acres and all the owners of the 16.6 Acres as evidenced by a written amendment executed by all the owners of the 5.2 Acres and the 16.6 Acres and recorded in the Real Property Records of Travis County, Texas.

5.5 It is further agreed that in the event the City or its assigns, through no solicitation or urging of the City of Cedar Park, the City of Leander, or the City of Round Rock or their assigns, shall be required by any applicable federal, state or local law or regulation to add or modify a feature or construct any facility associated with operation, maintenance, repair, upgrade, or replacement of any facilities constructed upon the 5.2 Acres that is not substantially similar to the site plan attached hereto as Exhibit C, such requirement of law shall prevail over these restrictions. However, in no event will any development restrictions or regulations enacted by the City of Cedar Park, the City of Leander, or the City of Round Rock prevail over this Declaration.

Executed effective as of the _____ day of _____, 2016.

The City of Leander, Texas

By: _____
Name: _____
Title: _____

Cathy L. Gross

Gary L. Gross

ACKNOWLEDGEMENTS

STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

 This instrument was acknowledged before me on the _____ day of _____,
2016, by _____, _____ of The City of
Leander, Texas, and on behalf of The City of Leander, Texas.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on the _____ day of _____,
2016, by Cathy L. Gross.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

 This instrument was acknowledged before me on the _____ day of _____,
2016, by Gary L. Gross.

Notary Public, State of Texas

**METES AND BOUNDS DESCRIPTION
OF A
5.217 ACRE TRACT OF LAND
SITUATED IN THE JOHN STEWART SURVEY NO. 551
AND THE ROBERT FOSTER SURVEY NO. 31,
TRAVIS COUNTY, TEXAS**

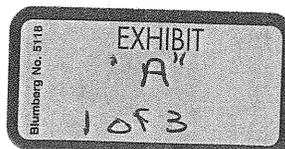
BEING A 5.217 ACRE (227,259 SQUARE FOOT) TRACT OF LAND SITUATED IN THE JOHN STEWART SURVEY NO. 551 AND THE ROBERT FOSTER SURVEY NO. 31, TRAVIS COUNTY, TEXAS; SAID 5.217 ACRE TRACT BEING COMPRISED OF A PORTION OF TRACT 1, ALL OF TRACT 2 (CALLED 1.069 ACRES) AND A PORTION OF TRACT 3 (CALLED 10.068 ACRES) WITH ALL 3 TRACTS BEING DESCRIBED IN A WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 11546, PAGE 1498 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS (R.P.R.T.C.T.), AND ALSO BEING A PORTION OF THAT CERTAIN CALLED 5.163 ACRE TRACT OF LAND DESCRIBED IN A SPECIAL WARRANTY DEED TO GARY L. GROSS AND WIFE, CATHY L. GROSS, AS RECORDED IN VOLUME 12817, PAGE 1043, R.P.R.T.C.T.; SAID 5.217 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found for the northernmost corner of the herein described tract and said Tract 2, same being the easternmost corner of Lot 1, Lake Travis Subdivision No. 6, recorded in Volume 4, Page 157 of the Plat Records of Travis County, Texas (P.R.T.C.T.), and also being on the westerly right-of-way (R.O.W.) line of Bernard Street (having a width of 50 feet at this location), and being located at Texas State Plane Coordinate grid position N=10,135,754.8226 and E=3,057,450.2885;

THENCE, South 28 degrees 30 minutes 50 seconds West, with the common westerly R.O.W. line of said Bernard Street and the easterly line of said Tract 2, same being the easterly line of said Lot 1, a distance of 104.96 feet to a 1/2-inch iron rod found for a corner of the herein described tract and marking the northernmost corner of said Tract 1, same being the northernmost corner of Lot 12, Lake Travis Subdivision No. 2, recorded in Volume 4, Pages 82-83, P.R.T.C.T., said point also marking the intersection of the westerly R.O.W. line of said Bernard Street and the southwesterly R.O.W. line of Jackson Street (having a width of 50 feet at this location);

THENCE, South 33 degrees 24 minutes 12 seconds East, with the common southwesterly R.O.W. line of said Jackson Street and the northeasterly line of said Tract 1, same being the northeasterly line of said Lot 12, a distance of 170.19 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for a corner of the herein described tract;

THENCE, South 51 degrees 48 minutes 33 seconds West, departing the southwesterly R.O.W. line of said Jackson Street, traveling partway across the interior of said Tract 1, same being said Lot 12, partway across the interior of said Tract 3, same being said 10.068 acre tract, and partway across the interior of said 5.163 acre tract, a distance of 910.86 feet to a 1/2-inch iron rod with orange plastic cap stamped "Wallace Group" set for the southernmost corner of the herein described tract and being on the southwesterly line of said 5.163 acre tract;



Description of a 5.217 acre tract (continued)

THENCE, with the southwesterly line of said 5.163 acre tract, the following three (3) courses and distances:

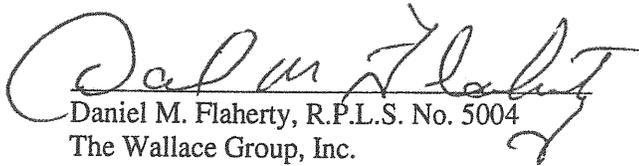
- 1) North 09 degrees 54 minutes 18 seconds West, a distance of 53.10 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 2) North 33 degrees 22 minutes 57 seconds West, a distance of 70.89 feet to a 1/2-inch iron rod found for a corner of said 5.163 acre tract and the herein described tract;
- 3) North 15 degrees 24 minutes 59 seconds West, a distance of 189.50 feet to a 1/2-inch iron rod found for the westernmost corner of said 5.163 acre tract and the herein described tract, same marking the southernmost corner of that certain called 2.763 acre tract of land described in a Special Warranty Deed to Jean I. Ringer, as recorded in Volume 13203, Page 148, R.P.R.T.C.T.;

THENCE, with the common northwesterly line of said 5.163 acre tract and the southeasterly line of said 2.763 acre tract, the following two (2) courses and distances:

- 1) North 56 degrees 56 minutes 36 seconds East, a distance of 98.46 feet to a 1/2-inch iron rod found for a corner of the herein described tract;
- 2) North 56 degrees 49 minutes 43 seconds East, a distance of 428.18 feet to a 1/2-inch iron rod found for a corner of the herein described tract, said point marking the common northernmost corner of said 5.163 acre tract, the easternmost corner of said 2.763 acre tract, and the westernmost corner of said 1.069 acre tract;

THENCE, North 56 degrees 52 minutes 06 seconds East, with the northwesterly line of said 1.069 acre tract, and traveling across the interior of said Lot 1, a distance of 393.94 feet to the **POINT OF BEGINNING** and containing 5.217 acres (227,259 square feet) of land, more or less, based on the survey and drawing made by The Wallace Group, Inc., Round Rock, Texas in July of 2013.

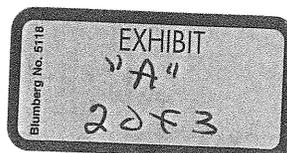
That I, Daniel M. Flaherty, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground under my direction and supervision.



Daniel M. Flaherty, R.P.L.S. No. 5004
The Wallace Group, Inc.
One Chisholm Trail, Suite 130
Round Rock, Texas 78681
Ph. (512) 248-0065
22951-FN05.doc



07-29-2013
Date



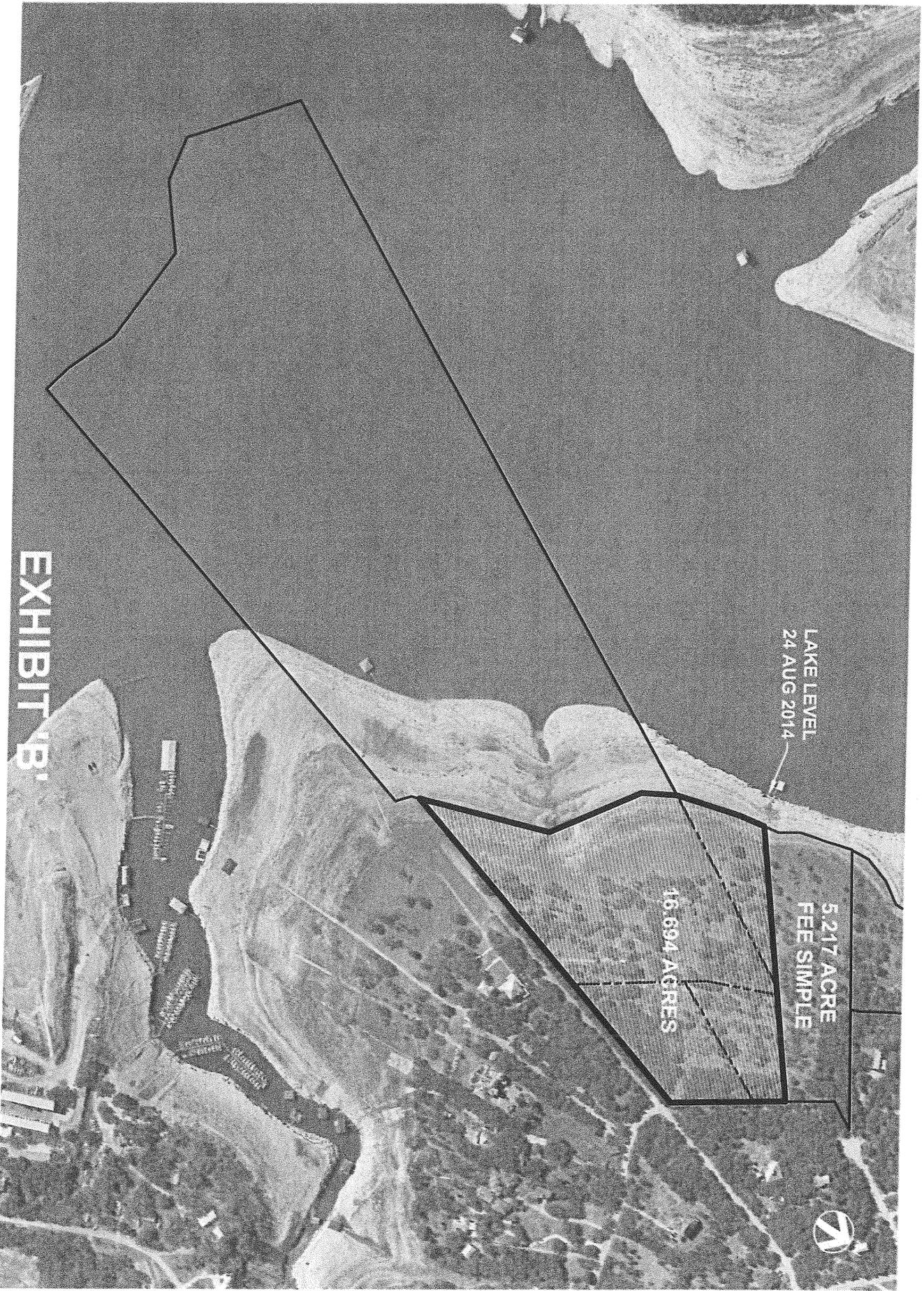


EXHIBIT 'B'

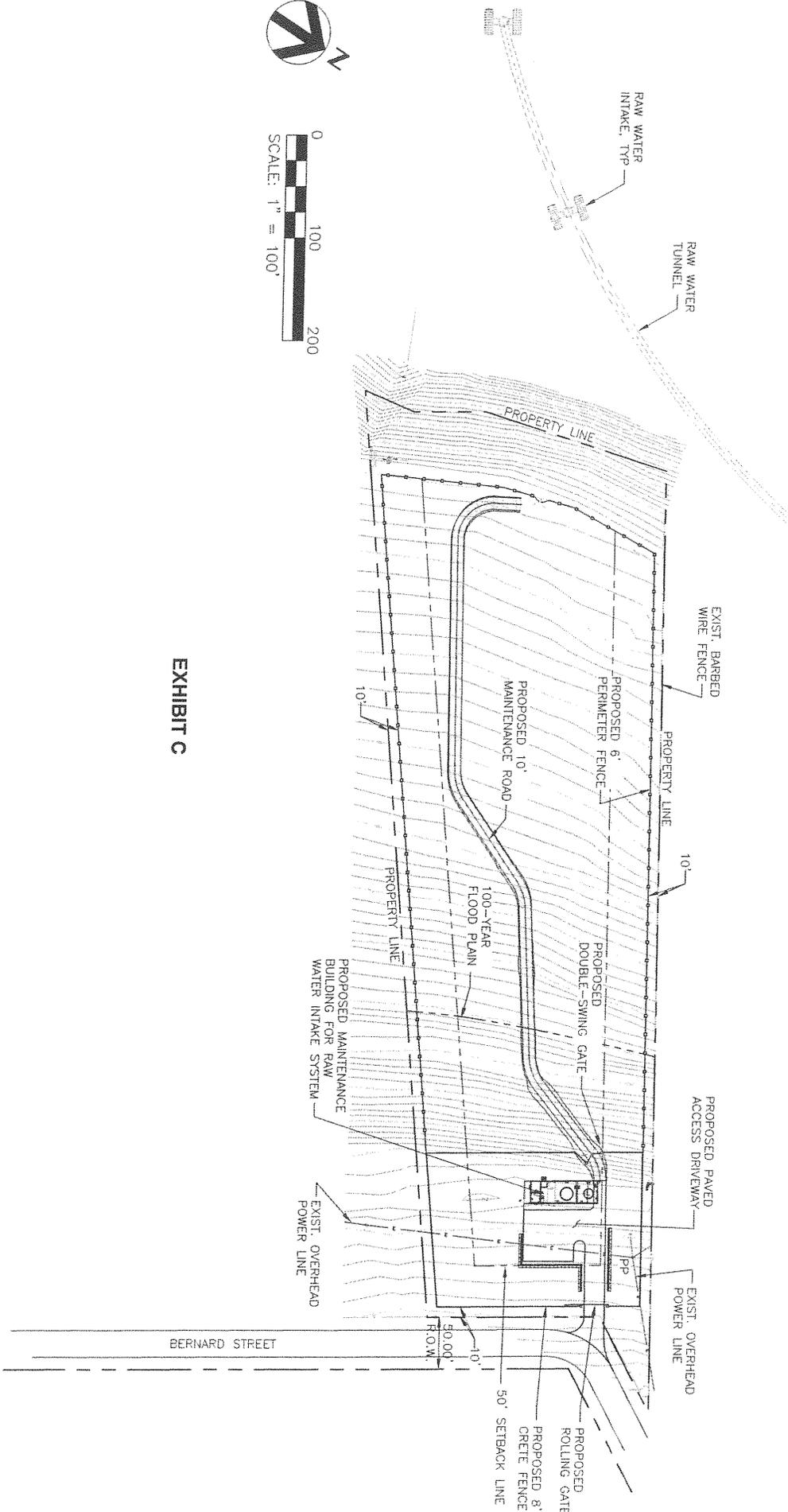


EXHIBIT C