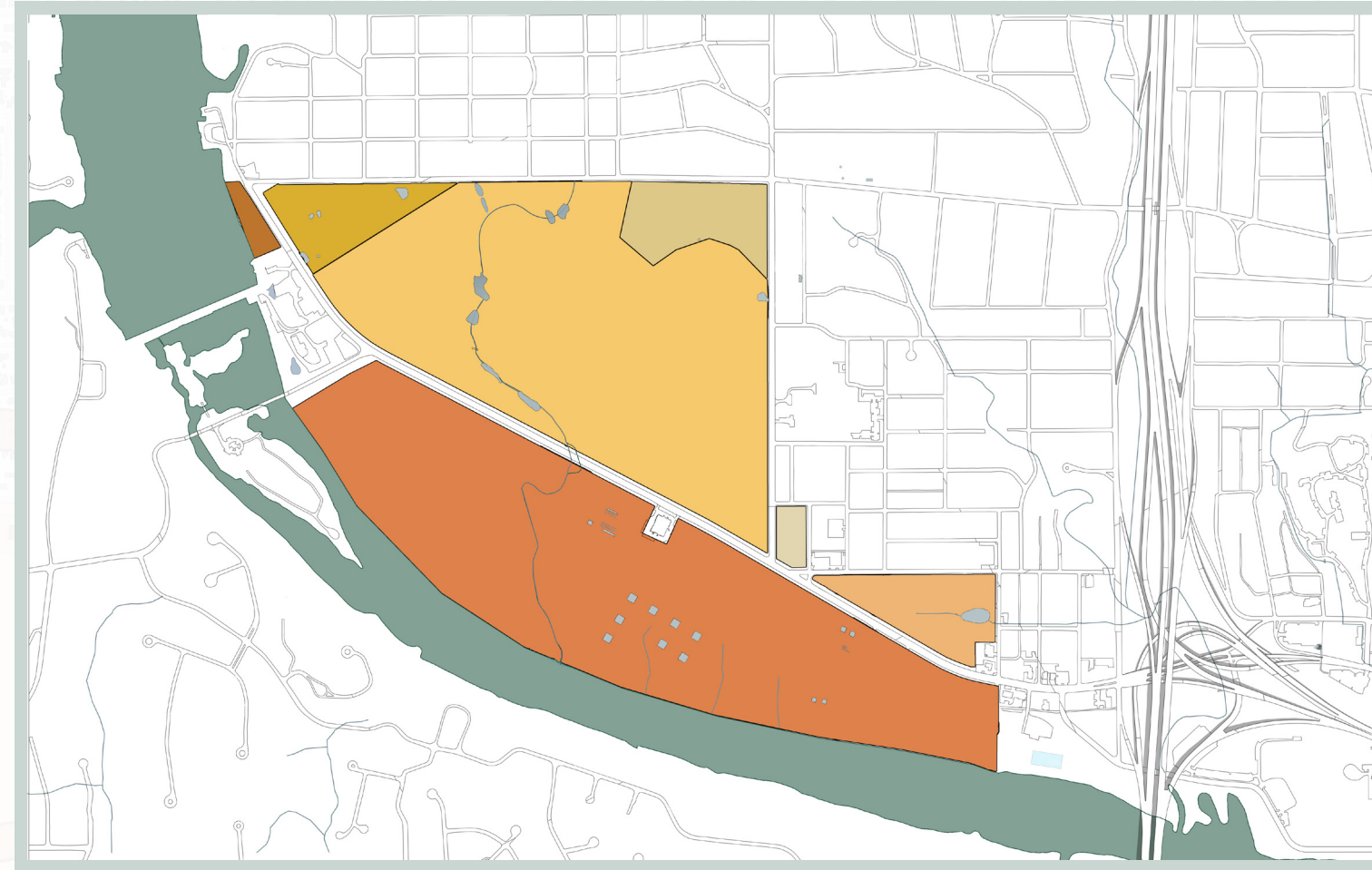


CHAPTER IV

REGULATORY ANALYSIS



4.1 Applicable Federal Laws	page 4.1
4.2 Applicable State Laws	page 4.3
4.3 City of Austin	page 4.4
4.4 Brackenridge Development Agreement.....	page 4.7
4.5 Site Regulatory Constraints Maps	page 4.9
4.6 Comparison of BDA to Current and Alternative Zoning Regulations	page 4.14
4.7 Innovative Development Regulations.....	page 4.22

4.1.1. APPLICABLE FEDERAL LAWS

This section summarizes the various Federal laws that affect how the Brackenridge Tract can be developed. Note that there is not a sufficiently detailed development or construction plan at the time of this report and that there may be additional laws which may apply depending upon the particular development or construction plans proposed.

4.1.1. CLEAN WATER ACT/SECTION 404 PERMITS

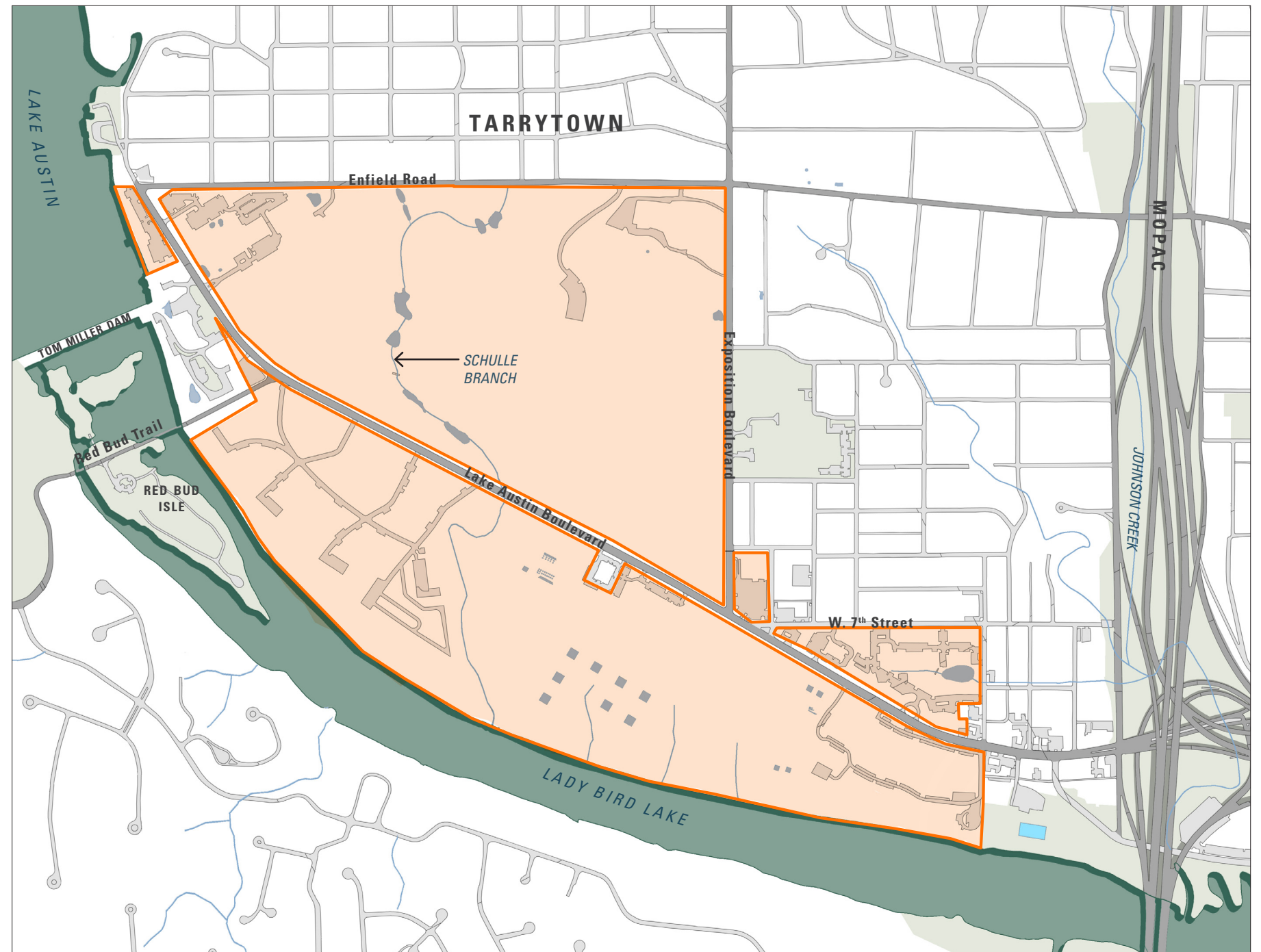
Section 404 of the Federal Clean Water Act requires a permit for all discharges by point sources of dredged or fill materials into "navigable waters" (33 USC § 1344). Currently the US Army Corps of Engineers (hereinafter sometimes "the Corps") and the Environmental Protection Agency ("EPA") accept the following broad definition of "navigable waters" as:

- a. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- b. All interstate waters, including interstate wetlands
- c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or (ii) from which fish or shellfish are or could be taken or sold in interstate or foreign commerce; or (iii) which are used or could be used for industrial purposes by industries in

- d. interstate commerce;
- d. All impoundments of waters otherwise defined as waters of the United States under this definition;
- e. Tributaries of waters identified in paragraphs (1)-(4) of this definition;
- f. The territorial sea; and
- g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (1)-(6) of this definition.
- h. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with the EPA. (33 CFR § 328.3 (a)) (emphasis added).

Note that there is a small creek/waterway that runs north to south through the Golf Course and Town Lake subtracts. It appears from the 1989 Brackenridge Development Agreement between the University and the City of Austin that this creek/waterway is known as "Schulle Branch." (See Section 7.7 of the Brackenridge Agreement). Given the broad definition of "navigable waters" utilized by the Corps of Engineers and EPA, it is possible that this creek/waterway could be considered "navigable waters." If so, development of the Golf Course and Town Lake tracts in a manner that would involve the discharge of dredged or fill materials into this waterway could require the issuance of a 404 Permit under the Clean Water Act. Further, to the extent the redevelopment of the tract affects wetlands, it is possible that a 404 Permit would be required.

The Clean Water Act's Section 404 program is administered by the Army Corps of Engineers. The regulations governing application for and processing of Section 404 permits are codified at 33 CFR Part 325.



Brackenridge Tract site map



4.1.2. NATIONAL ENVIRONMENTAL POLICY ACT

If development of the Brackenridge Tract will involve federal action such as a license or permit issued by a federal agency, including a Section 404 Permit issued by the Army Corps of Engineers, then the National Environmental Policy Act of 1969 may be triggered.

The National Environmental Policy Act of 1969 ("NEPA") is intended to reduce or eliminate environmental damage and to promote the understanding of the ecological systems and natural resources important to the United States. (42 USC 4321). NEPA imposes procedural requirements on federal agencies to analyze the environmental impact of their proposals and actions. *Coliseum Square Ass'n, Inc. v. Jackson*, 465 F.3d 215, 2245 (5th Cir. 2006). NEPA's central requirement is that federal agencies must, except in certain qualifying situations, complete a detailed Environmental Impact Statement ("EIS") for any major federal action significantly affecting the quality of the human environment. (42 USC 4332 (2)).

A federal agency is required to produce a full EIS only where the agency proposes to undertake a project that qualifies as a "major federal action," and then only when that action "significantly affects the quality of the human environment." (42 USC 4332 (2) (C)). Regulations promulgated pursuant to NEPA define a "major federal action" as "actions with effects that may be major and which are potentially subject to federal control and responsibility." (40 CFR 1508.18). Effects, for purposes of the regulations, include: (a) direct effects, which are caused by the action and occur at the same time and place and (b) indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still

reasonably foreseeable. (40 CFR 1508.8)

"Significantly," as used in NEPA, requires consideration of both "context" and "intensity." "Context" means the significance of an action must be analyzed in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. (40 CFR 1508.27 (a)). "Intensity" refers to the severity of the impact. In evaluating "intensity," the agency should consider: (1) both beneficial and adverse impacts; (2) the degree to which the proposed action affects public health and safety; (3) unique characteristics of the geographic area, such as proximity to historic or cultural resources, parklands, wetlands, or ecologically critical areas; (4) the degree to which the effects on the quality of the human environment are likely to be highly controversial; (5) the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks; (6) the degree to which the action may establish a precedent for future actions with significant effects; (7) whether the action is related to other actions with individually insignificant but cumulatively significant impacts; (8) the degree to which the action may adversely affect districts, sites, structures, or objects listed or eligible to be listed in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources; (9) the degree to which the action may adversely affect endangered or threatened species or critical habitat under the Endangered Species Act; and (10) whether the action threatens a violation of Federal, State, or local law imposed for the protection of the environment. (40 CFR 1508.27 (b)).

The regulations promulgated pursuant to

NEPA allow an agency to prepare a more limited document, an Environmental Assessment ("EA"), if the agency's proposed action neither is categorically excluded from the requirement to produce an EIS nor would clearly require the production of an EIS. (40 CFR 1501.4 (a), (b)). Where an agency determines that an EIS is not required, the agency must issue a Finding of No Significant Impact ("FONSI"). The FONSI must briefly state why the proposed agency action will not have a significant impact on the human environment. (40 CFR 1501.4 (e), 1508.13).

The potential application of NEPA depends upon whether the development of the Brackenridge Tract requires a federal license or permit to be issued by a federal agency, which at this time is not known.

APPLICABLE FEDERAL LAWS



4.2. APPLICABLE STATE LAWS

This section summarizes the various State laws that affect how the Brackenridge Tract can be developed.

4.2.1. CHAPTER 3151, STATE GOVERNMENT CODE (PRESERVATION OF VIEW OF STATE CAPITOL)

Chapter 3152 of the State Government Code requires the preservation of views of the State Capitol building by establishing thirty protected view corridors. The view corridors are defined planes measured from certain point around the City of Austin to the base of the dome of the State Capitol building. Structures within defined view preservation corridors may not exceed the maximum permissible height computed in accordance with a defined formula¹. The Brackenridge Tract lies within the Red Bud Trail Corridor. (Sec 3151.002 (19) of the State Government Code).

4.2.2. CHAPTER 212, LOCAL GOVERNMENT CODE (MUNICIPAL REGULATIONS OF SUBDIVISIONS AND PROPERTY DEVELOPMENT)

Section 212.004 of the State Local Government Code requires owners of land within the corporate limits or the extraterritorial jurisdiction of a municipality who divide a tract of land into two or more parts to lay out and record a subdivision plat. The plat must include certain information including dimensions of the subdivision and each street, alley, park, or other part intended

¹ Construction of a structure within a defined Capitol view corridor may not exceed the maximum permissible height computed in accordance with the following formula:
$$h = ((653' - eVP) \times (b')) - (eS - eVP)$$
where:
h is the maximum permissible height of the structure
b is the distance between the selected view point and the center of the Capitol dome;
b' is the distance between the view point and the structure;
eS is the elevation of the structure; and
eVP is the elevation of the view point. (Sec. 3151.051 of the State Government Code)

to be dedicated to public use and must be recorded in the county in which the tract is located. Divisions of land into parts greater than five acres are exempt from this requirement where each part has access and no public improvement is being dedicated.

Compliance with Chapter 212 would not be required in the event the University chooses to lease, rather than sell, portions of the Brackenridge Tract to third parties for redevelopment.

4.2.3. SECTION 11.086. WATER CODE

Section 11.086 of the State Water Code prohibits a person from diverting or impounding the natural flow of surface waters in the state in a manner that damages the property of another by the overflow of the water diverted or impounded. The Section also prohibits a person from permitting such a diversion or impoundment to continue. This Section essentially requires the University or its lessee to develop the Tract in a manner that doesn't increase or materially impact the natural flow of surface water onto adjoining lands².

² § 11.086. OVERFLOW CAUSED BY DIVERSION OF WATER.

(a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.

4.2.4. TEXAS TRANSPORTATION CODE

Section 311.001 of the Texas Transportation Code provides that a home rule municipality has exclusive control of the public highways, streets, and alleys of the municipality. Among other powers, the municipality may open or change a public street or alley of the municipality. Section 311.007 provides that a municipality may also vacate, abandon, or close a street or alley.

Note that to the extent the redevelopment of the Brackenridge Tract requires closing or re-routing public streets running through the Tract, this would require the City of Austin to approve such street closings and re-routings. Vacations and abandonments are required to be approved by the Austin City Council and the process can take three months or more.

Note that the Legislature has granted specific authority for certain institutions of higher education in counties with more than 3 million in population (ie Harris County, Texas in which the City of Houston is primarily located) to vacate, abandon and close streets running through campus under certain conditions³.

³ Sec. 51.904 of the Education Code provides as follows:
STREET CLOSING. The governing board of an institution of higher education as defined by Section 61.003 in a county having a population of more than 3 million may vacate, abandon, and close a street or alley running through the campus if the institution:

- (1) owns all of the real property abutting the street or alley;
- (2) owns 20 or more acres of real property at the campus where the street or alley is located;
- (3) before the 45th day preceding the date the street or alley is to close, provides to the governing body of the political subdivision owning, controlling, or maintaining the street or alley written notice of the institution's intent to close the street or alley; and
- (4) for each utility line or facility in the affected street or alley that is owned by a governing body described by Subdivision (3) or a franchised utility company:
 - (A) grants an easement of sufficient size and configuration and with appropriate rights to enable the continued use, operation, and maintenance of the line or facility; or
 - (B) moves the line or facility to another location:
 - (i) on the approval of the appropriate governing body and franchised utility company; and
 - (ii) at the sole expense of the institution.

4.2.5. TEXAS PARKS AND WILDLIFE CODE

In the event the University formally dedicates areas within the Brackenridge Tract to the public as parkland in the future as part of the redevelopment of the Tract, the University should be aware that subsequent crossings of the dedicated parkland by utilities or roads may trigger a requirement under Chapter 26 of the Texas Parks and Wildlife Code to hold a hearing prior to such crossings.

Section 26.001 of the Texas Parks and Wildlife Code provides as follows:

"Sec. 26.001. PROTECTED LAND; NOTICE OF TAKING. (a) A department, agency, political subdivision, county, or municipality of this state may not approve any program or project that requires the use or taking of any public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site, unless the department, agency, political subdivision, county, or municipality, acting through its duly authorized governing body or officer, determines that:

- (1) there is no feasible and prudent alternative to the use or taking of such land; and
- (2) the program or project includes all reasonable planning to minimize harm to the land, as a park, recreation area, scientific area, wildlife refuge, or historic site, resulting from the use or taking.

(b) A finding required by Subsection (a) of this section may be made only after notice and a hearing as required by this chapter.

(c) The governing body or officer shall consider clearly enunciated local preferences, and the provisions of this chapter do not constitute a mandatory prohibition against the use of the area if the findings are made that justify the approval of a program or project."

Note that Section 26.004 excludes from the requirements of 26.001:

- (1) land that is originally obtained and designated for another public use and is temporarily used as a park, recreation area, or wildlife refuge pending its use for the originally designated purpose;
- (2) the program or project that requires the use or taking of the land being used temporarily as a park, recreation area, or wildlife refuge is the same program or project for which the land was originally obtained and designated; and
- (3) the land has not been designated by the department, agency, political subdivision, county, or municipality for use as a park, recreation area, or wildlife refuge before September 1, 1975.

It is possible that the Brackenridge Tract and the proposed redevelopment thereof may qualify for the exclusion of Section 26.004.

If in fact Section 26.001 does apply, The University of Texas System Board of Regents would be required to hold a hearing and find that there is no feasible and prudent alternative to the use or taking of such land, i.e. the designated parkland being crossed by roads or utilities, and that the program or project includes all reasonable planning to minimize harm to the land from such use or taking. The requirements of Chapter 26.001 do not constitute a mandatory prohibition against the crossings provided the requisite findings are made.

If it is determined that Chapter 26 does potentially apply to the future redevelopment of the Brackenridge Tract, the University may want to consider the option of doing all necessary crossings prior to the dedication of parkland or the option of utilizing private, as opposed to public parkland.



4.3. CITY OF AUSTIN

The University of Texas System is a constitutionally mandated agency of the State of Texas and as such is not subject to City of Austin, Texas ordinances and rules. However, in the event The University of Texas System chooses to comply with City of Austin, Texas rules and regulations, a discussion of the effect of some of the more significant provisions of such ordinances and rules is provided in Section 4.6 and 4.7 of this report.

4.3.1. ORDINANCES/CENTRAL WEST AUSTIN NEIGHBORHOOD PLAN

As noted in the Brackenridge Development Agreement, The University of Texas System ("the University") is a constitutionally mandated agency of the State of Texas and as such, is not subject to the City of Austin, Texas ("City") ordinances, codes, regulations, or other laws or rules. (Hereinafter sometimes referred to as "City Rules"). (See Preamble to Brackenridge Development Agreement). The University's exemption from City Rules extends to the proposed Central West Austin Neighborhood Plan, a neighborhood planning effort that when completed, is implemented via a zoning overlay district.

If the University voluntarily chooses to follow current City Rules in redeveloping the Brackenridge Tract, Sections 4.6 and 4.7 of this report discuss many of the zoning related requirements and implications of the City Rules. Except as noted below, the City's subdivision, site plan and sediment/erosion control regulations do not significantly impact the developability of the Brackenridge Tract. Three areas of the City Rules that would potentially impact development of the Brackenridge Tract in a significant way are the City's Watershed Regulations, the City's Waterfront Overlay regulations, and the City's Tree Protection

regulations, which are discussed below.

4.3.2. CITY WATERSHED REGULATIONS

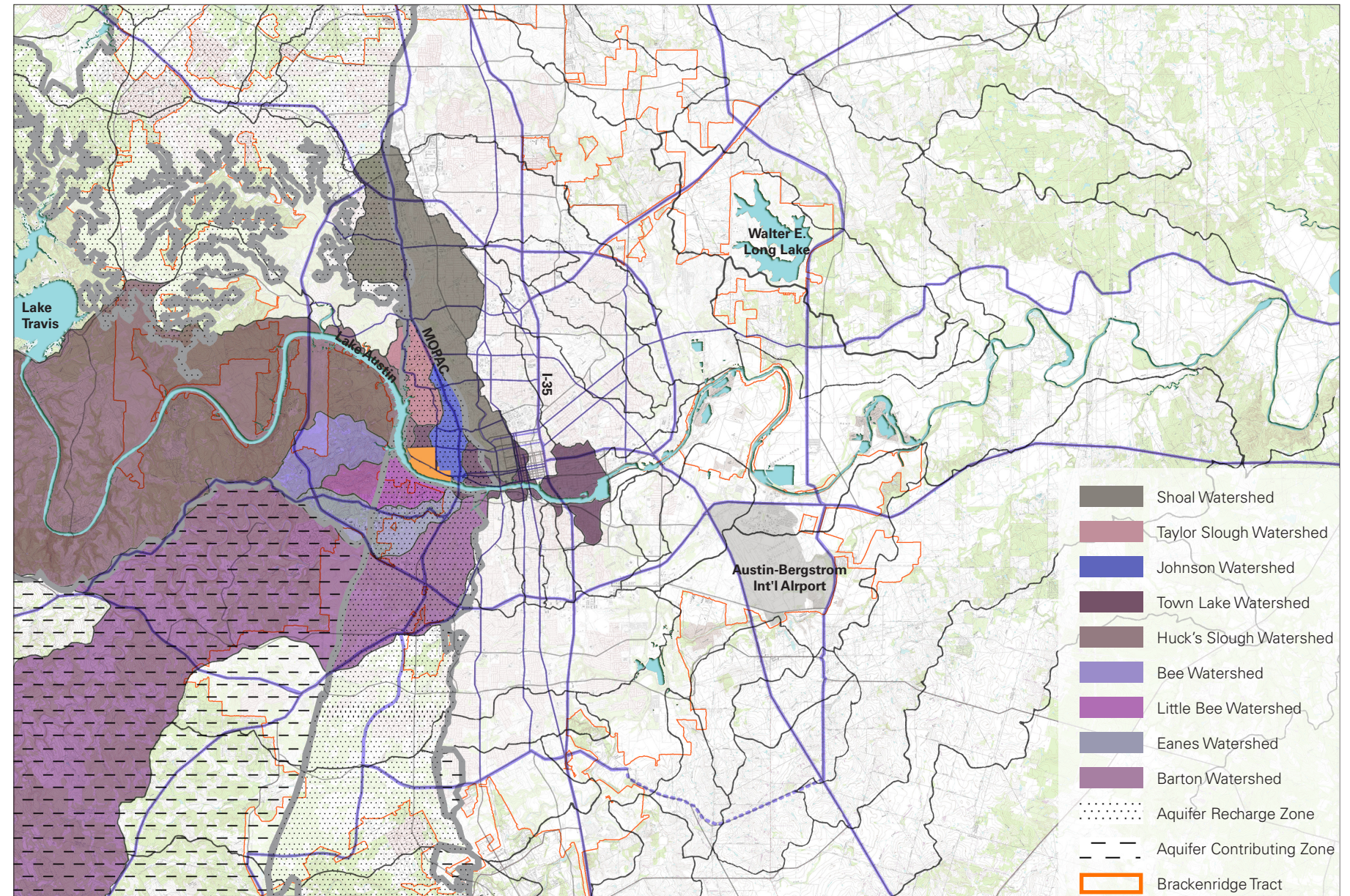
The City's Watershed regulations were promulgated pursuant to Section 26.180 of the State Water Code, included in the appendix to this report, which authorizes certain Texas cities to adopt ordinances to control and abate nonpoint source water pollution. The City's Watershed regulations are codified in Articles 1 through 12 of Chapter 25-8 of the City Code, a copy of which is included in the appendix to this report. The City's Watershed regulations organize the various watersheds within the City and its extraterritorial jurisdiction into general watershed categories. The Brackenridge Tract falls within the Town Lake watershed which is classified as a Water Supply Suburban Watershed. (Sec. 25-8-2 (D) (10) (c) of the City Code).

The City's Watershed regulations primarily seek to control and abate nonpoint source water pollution by placing limits on the amount of "impervious cover" allowed on land and by requiring the use of water quality controls. "Impervious cover" is defined as "roads, parking areas, buildings, swimming pools, rooftop landscapes and other impermeable construction covering the natural land surface." (Sec. 25-8-1 (6) of the City Code).

A Critical Water Quality Zone and an Uplands Zone are established within the Town Lake Watershed. Within these Zones, only certain activities and amounts of impervious cover are allowed within each Zone.

The Critical Water Quality Zone runs parallel to the shoreline of Town Lake and extends inward for a width of 100 feet. (Sec 25-8-92 (B) of the City Code)¹. Within the Critical

¹The width of the critical water quality zone is only 75 feet if the developed use is single family detached development. (25-8-92 (B) (2) of City Code).



Edwards Aquifer & watersheds

Water Quality Zone for the Town Lake watershed, the only uses permitted are:

1. fences which do not obstruct flood flows;
2. a public or private park, golf course, or open space (other than a parking lot) provided a program of fertilizer, pesticide and herbicide use is approved by the City;
3. a boat dock, pier, wharf, or marina and necessary access and appurtenances, provided that the City approves any

4. utility lines; and
5. street crossing for arterials identified in the City's Transportation Plan. (Sec. 25-8-261, 262 of the City Code).

The Uplands Zone covers all land outside of the Critical Water Quality Zone. The City's Watershed regulations limit the amount of impervious cover within the Uplands Zone. Impervious cover limits are expressed as

percentages of "net site area", which is defined as areas within the Uplands Zone exclusive of areas designated for wastewater irrigation and further is limited to 100 percent of land with a slope gradient of 15% or less, 40 percent of land with a slope gradient of more than 15% and not more than 25%; and 20 percent of land with a slope gradient of more than 25% and not more than 35%. (Sec 25-8-62 of the City Code).

APPLICABLE CITY OF AUSTIN LAWS



Subject to more restrictive regulations, such as those imposed by the City's Zoning regulations or the City's Waterfront Overlay regulations, the amount of impervious cover permitted in the Uplands Zone depends upon the developed use. For multifamily and commercial uses in the Town Lake watershed, a maximum impervious cover of 40% of the net site area (55% with development intensity transfers from the Critical Water Quality Zone pursuant to 25-8-425 of the City Code)¹ is permitted. For duplex or single family residential use a maximum impervious of 30% of net site area (40% with transfers) is permitted. (Sec. 25-8-424 of the City Code).

Section 25-8-211 of the City's Watershed regulations require the use of water quality controls for all development with impervious cover that exceeds 20% of net site area and for the development of a golf course, play field, or similar recreational use if fertilizer, herbicide, or pesticide is applied. "Water quality control" is defined as a structure, system or feature that provides water quality benefit by treating stormwater run-off. (Sec. 25-8-1 (10) of the City Code).

The City's Watershed regulations also establish protection for special features defined as "critical environmental features". These are defined as "features that are of critical importance to the protection of environmental resources, and include bluffs,

¹ Section 25-8-425 of the City Code authorizes transfers of 15,000 square feet of additional impervious cover to an Uplands Zone for each acre of land in a Critical Water Quality Zone that an applicant dedicates in fee simple to the City. Additionally, for each acre of land in the Uplands Zone that is located within the buffer zone of a critical environmental feature that is left natural and undisturbed, an additional 15,000 square feet of impervious cover is authorized. Additionally, for each acre of land in an Uplands Zone that is used for wastewater irrigation that is restricted against future development and left in a natural state (other than for necessary irrigation lines and tailwater control berms), an additional 15,000 square feet of impervious cover is authorized.

canyon rimrocks, caves, sinkholes, springs, and wetlands." (Section 25-8-1 (5) of the City Code).

The City's regulations require that drainage patterns for proposed development be designed to protect critical environmental features from the effects of runoff from developed areas and that the catchment areas of recharge features be maintained in a natural state. Where necessary, special controls must be used to avoid the effects of erosion or sedimentation or high rates of flow. (Sec. 25-8-281 (A) of the City Code).

Further, a buffer zone is required to be established around each critical environmental feature. As a general rule, the width of the required buffer zone must be 150 feet from the edge of the critical environmental feature. Within the buffer zone, construction and wastewater disposal or irrigation is prohibited and the natural vegetative cover must be retained to the maximum extent practicable. The City's Watershed regulations authorize an administrative variance to a buffer requirement where an applicant demonstrates that the measures proposed by the applicant preserve all characteristics of the critical environmental feature. (See 25-8-281 of the City Code).

4.3.3. CITY'S WATERFRONT OVERLAY ZONE REGULATIONS

The purpose of the City's Waterfront Overlay Regulations, a copy of which is included in the appendix to this report, is to "promote the harmonious interaction and transition between urban development and the parkland and shoreline of Town Lake and the Colorado River." (Sec. 25-2-175 (A) of the City Code). The Waterfront Overlay District regulations are a zoning overlay district which establishes setback, use and impervious cover restrictions upon land subject to the regulations. The Waterfront Overlay

Regulations divide affected land into various sub-districts, which have specific development restrictions.

Only the portions of the Brackenridge Tract south of Lake Austin Boulevard and east of the Tom Miller Dam are within the City's Waterfront Overlay District. Those portions of the Tract are located within the University/Deep Eddy sub-district of the Waterfront Overlay. (See Sec. (1) of Appendix C to Chapter 25-2 of the City Code).

The City's Waterfront Overlay regulations impose use restrictions, design requirements and site development restrictions, including restrictions on maximum impervious cover allowed and maximum height of structures. Where these restrictions and requirements conflict with other provisions of the City's Rules, the Waterfront Overlay regulations supersede such other conflicting requirements including those of the City's Watershed Ordinance and zoning related site development regulations and permitted uses. (Sec. 25-2-711 (C) of the City Code).

a. Primary and Secondary Setback Areas

The Waterfront Overlay District regulations establish Primary and Secondary Setback Areas within each sub-district. Within each Setback Area, certain development limitations apply.

For the portions of the Brackenridge Tract south of Lake Austin Boulevard and between Red Bud Trail and MoPac, the Primary Setback Area is 300 feet landward from the Town Lake Shoreline and the Secondary Setback Area is the area between 300 and 400 feet landward from the Town Lake shoreline.

b. Use Restrictions

Automotive related uses (automotive rentals, automotive repair services, automo-

tive sales, automotive washing) as well as commercial off-street parking and uses with a drive-in service are prohibited anywhere within the University/Deep Eddy sub-district. Additionally, hotel-motel, service stations and local utility service uses require approval of a conditional use permit by the City's Zoning and Platting Commission. (Sec. 25-2-692 (A) of the City Code).

Parking areas and above grade parking structures are prohibited within a Primary Setback Area. (Sec. 25-2-721 (B) (1) of the City Code). Completely below grade parking structures are not subject to any setback requirement. (Sec. 25-2-721 (D) (3) of the City Code).

Surface parking must be placed along roadways, if practicable and must be screened from views from Town Lake and parkland. (Sec. 25-2-721 (D) (1) of the City Code).

Uses permitted within Primary Setback Areas are park facilities (including picnic tables, observation decks, trails, gazebos and pavilions) if located on public park land and impervious cover does not exceed 15%. (Sec. 25-2-721 (C) of the City Code).

Uses permitted within a Secondary Setback Areas are fountains, patios, terraces, outdoor restaurants, and similar uses provided the impervious cover does not exceed 30%. (Sec. 25-2-721 (C) of the City Code).

c. Site Development Regulations

For any areas within a Primary Setback Area, a Secondary Setback Area or an area within fifty feet of a Secondary Setback line, the maximum permitted height for a building is 35 feet. (Sec.25-2-744 (D) (1) of the City Code).

The maximum impervious cover for development within a Primary Setback Area is 15%. The maximum impervious cover for

development within a Secondary Setback Area is 30%. Thus, despite the more permissive impervious cover maximums allowed by the City's Watershed Regulations or under the site development regulations for the zoning base district, the maximum impervious cover percentages for the Primary and Secondary Setback Areas would be significantly less pursuant to the Waterfront Overlay Zone regulations. The maximum impervious cover for an area outside of the Primary and Secondary Setback Area is 40%. (Secs. 25-2-721 (B). (C), 25-2-744 (E) of the City Code).

d. Design Regulations

Exterior mirrored glass and glare producing glass surface building materials are prohibited. (Sec. 25-2-721 (E) (1) of the City Code).

A distinctive building top is required for a building exceeding 45 feet in height. Distinctive building tops include cornices, steeped parapets, hipped roofs, mansard roofs, stepped terraces, and domes. (Sec. 25-2-721 (E) (2) of the City Code).

A building base wall² is required for any building that fronts on Town Lake, adjoins public park land or is across a street from public park land. The base wall may not exceed 45 feet. (Sec. 25-2-721 (E) (3) of the City Code).

A building façade may not extend horizontally in an unbroken line for more than 160 feet. (Sec.25-2-721 (E) (4) of the City Code).

4.3.4. CITY TREE PROTECTION REGULATIONS

² A "base wall" is defined as the vertical surface of a building beginning at the finished grade up to a level defined by a setback or an architectural treatment, including a cornice line or similar projection or demarcation that visually separates the base of the building from the upper portion of the building. (Sec. 25-2-712 (1) of the City Code).



The City's tree protection regulations are codified in Subchapter B of Chapter 25-8 of the City Code, a copy of which is included in the appendix to this report. With certain limited exceptions, the City requires a permit for the removal of a "protected tree," which is defined as a tree with a circumference of 60 inches or more, measured four and one half feet above natural grade. (Secs. 25-8-621 (A); 25-8-602(2) of the City Code). A permit is not required for removal of a damaged protected tree that is a hazard to life or property if removed within seven days of damage or for removal of protected trees identified for removal on an approved preliminary plan or site plan or identified for removal in a capital improvement project approved by City Council. (Sec. 25-8-621 (B), (C), (D) of the City Code).

An application to remove a protected tree shall be approved if the City determines that the tree (1) prevents reasonable access to the property; (2) prevents a reasonable use of the property; (3) is a hazard to life or property, and the hazard cannot reasonably be mitigated without removing the tree; (4) is dying or dead; (5) is diseased and restoration to sound condition is not practicable or the disease may be transmitted to other trees and endanger their health; or (6) for trees located on public property or a public street or easement, the tree prevents the opening of necessary vehicular traffic lanes or prevents the construction of utility or drainage facilities that may not feasibly be re-routed. (Sec. 25-8-624 (A) (6) of the City Code).

The City may and typically does, require mitigation, including the planting of replacement trees, as a condition of application approval. (Sec. 25-8-622 of the City Code).

Also, the City requires an application for site plan approval to include a grading and tree protection plan and the application must demonstrate that the design of the project

will preserve the existing natural character of the landscape, including the retention of trees eight inches or larger in diameter to the extent feasible. If development under a proposed site plan will remove a tree eight inches or larger in diameter, the City may, and typically does, require mitigation, including the planting of replacement trees as a condition of site plan approval. Thus, to the extent the University decides to comply with the City's Rules for approval of site

plans for development of the Brackenridge Tract, a grading and tree protection plan will be required and mitigation will likely be required for removal of trees eight inches in diameter or greater. (Sec. 25-8-604 of the City Code).

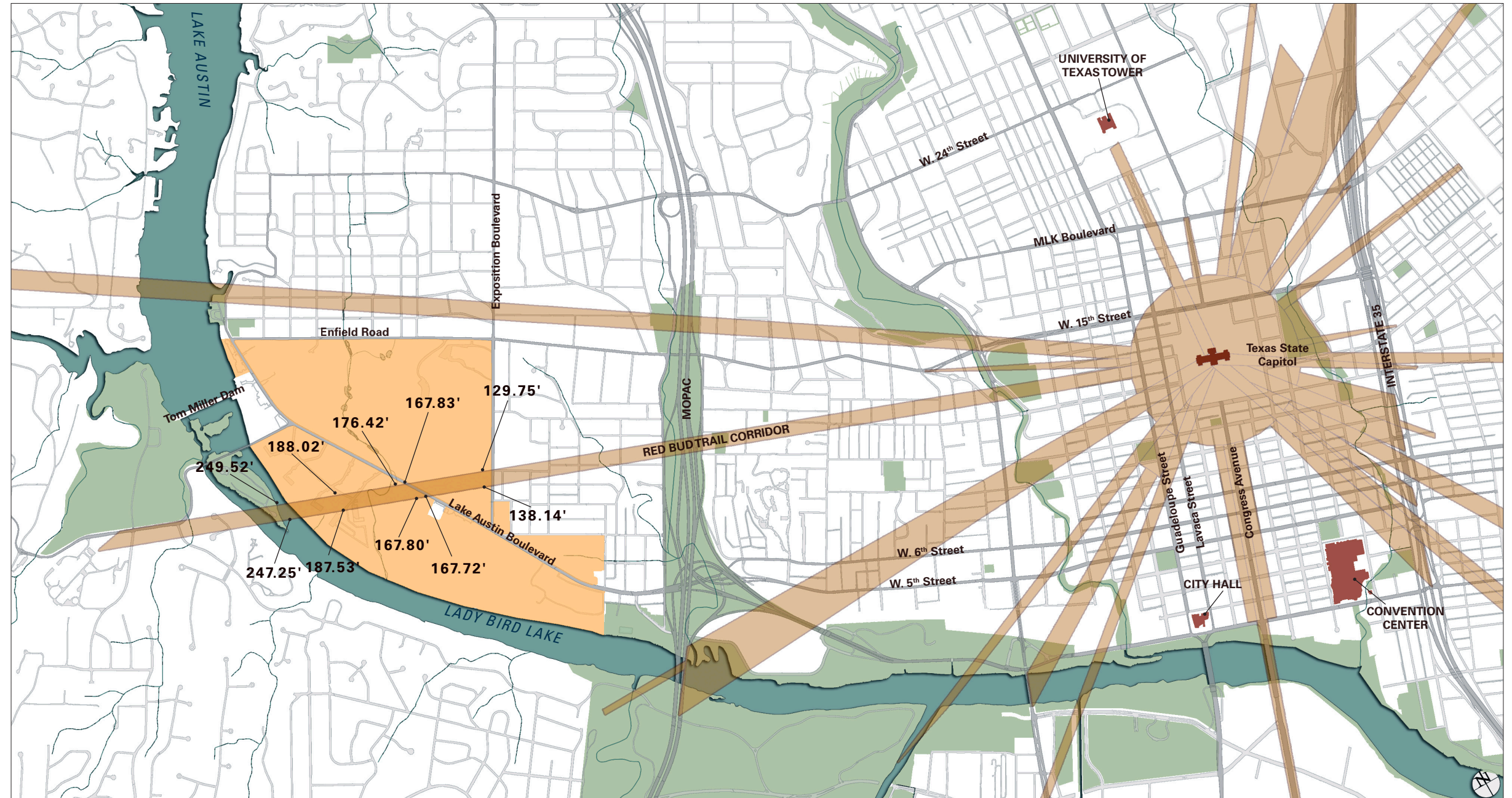
4.3.5. CAPITOL VIEW CORRIDOR

The City of Austin has enacted its own Capitol View Corridors which are substantially

similar to the State's. The City's View Corridors also includes a Red Bud Trail preservation corridor which is virtually identical to the State's except that the City's corridor is slightly wider than the State's.

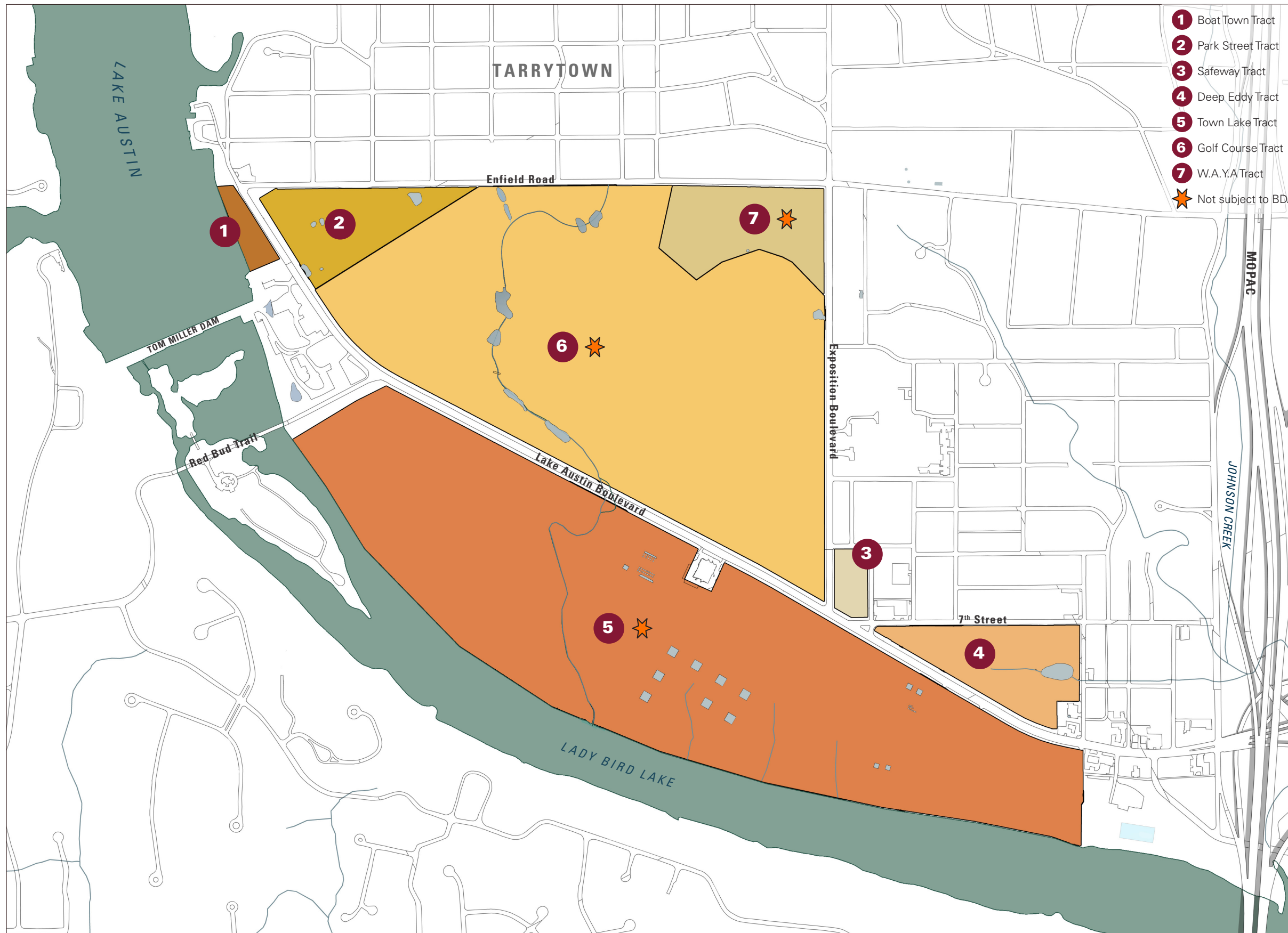
As indicated in a Capitol View Corridor Determination Report produced by the City of Austin in July of 2008, the State Red Bud Trail Corridor crosses portions of the Brackenridge Apartments, Brackenridge Field Lab

and Golf Course sub-tracts. As further indicated in the Determination Report, the View Corridor permits maximum building heights of between 129.75 and 249.52 feet above ground level within the defined Corridor.



City of Austin Capitol View Corridor map with maximum building heights indicated

APPLICABLE CITY OF AUSTIN LAWS



4.4. BRACKENRIDGE DEVELOPMENT AGREEMENT

4.4.1. SUMMARY OF EXISTING REGULATIONS

In 1989 the Board of regents and the City negotiated the Brackenridge Development Agreement, which established development¹ rights for the non-university related development of portions of the Brackenridge Tract (hereinafter sometimes “the Agreement” or the “Brackenridge Agreement”). The Agreement established use restrictions, height limitations, land use densities, pervious and impervious cover requirements, procedures for review of site and construction plans and mechanisms for the provision of utility services to parcels within the Brackenridge Tract. The Golf Course tract and the WAYA tract were not covered by the Agreement. There is an overall development limitation of 1.7 million square feet for Non-University Purpose development on what is referred to as the “North Tracts” (the Deep Eddy, Park Street, Town Lake, Boat Town and Safeway Tracts). The Agreement does not govern development of the Tract for University or State Purposes². The Agreement’s 30 year initial term expires in 2019 and there are three 5 year extensions that are cancellable by either the

¹ “Non-University Purpose” is defined in the Agreement as a use which is not a University or State Purpose as such terms are defined in the Agreement (Sec. 2.1 of the Agreement).

² “University Purposes” is defined in the Agreement as the use and development of the Property, as determined by the University, for the furtherance of any constitutional or statutory purpose of the University, including but not limited to, the construction of buildings and facilities for uses essential to or commonly associated with teaching, research, the preservation of knowledge, and all auxiliary enterprises, buildings, facilities and uses.

“State Purposes” is defined as any use of the Property by the State of Texas or any agency or subdivision thereof for a public purpose, including any uses or services incidental to said public purposes. (Sec. 2.1 of the Agreement).

Tract map with BDA applicability overview

Board of the City.

The following sections will summarize the site development regulations and permitted uses for each tract governed by the Agreement and will generally compare those regulations and uses to that allowed under the City zoning categories which are currently designated for some of the tracts.

Boat Town Tract

Sections 7.1 and 5.1 D of the Agreement outline specific regulations and prohibited uses for this tract (See Section 4.6 and Appendix C of this report). Among other things, the Agreement imposes a 40 foot maximum height limitation on structures, and a maximum floor area ratio (FAR) of 0.4 for development. Additionally, a maximum impervious cover of 80% of net site area is allowed. One special provision of note affecting this tract is that public access to Lady Bird Lake was required to be preserved in the development of this tract. In return for this agreement, the City of Austin agreed to grant and convey perpetual, non exclusive easement to the University authorizing the use and development of all inundated land owned by the City abutting this tract for use and development conforming to the Agreement. (Secs. 7.1 g 2 and 7.1 h. 10 of the Agreement).

Comparing the currently applicable development regulations under the Agreement with the City's regulations governing "CS" zoned properties, the City's regulations are generally more permissive. For example, the maximum height (60'), and the maximum floor area ratio of 2.0 permitted under the City's CS zoning regulations are greater than that allowed under the Agreement. Note, however, that the maximum impervious coverage allowed under the Agreement would be more permissive (80%) than that allowed under the City's watershed regulations (40%).

Park Street Tract

Sections 7.2 and 5.1 B of the Agreement outline specific regulations and prohibited uses for this tract (See Section 4.6 and Appendix C of this report). Under the Agreement, the maximum height for structures is 65 feet (subject to the additional height restrictions for structures within 50 and 200 feet of Enfield Road, as discussed below) and the maximum FAR is 0.45. The maximum impervious coverage is 80%. For non-residential development within a certain distance of Enfield Road, there is an additional height restriction: for structures between 50 and 200 ft from the right of way of Enfield Road, structures shall not exceed two stories or 30 feet in height. For structures over 200 feet from the right of way of Enfield Road, structures may not exceed 65 feet in height. (Section 7.2 a, b, f, g of the Agreement). Note also that there is a special provision in the Agreement limiting multifamily density to a maximum of 22 units per acre. There is also a special provision prohibiting direct street access through the Tract connecting Enfield Road to Lake Austin Boulevard.

As noted in Section IV B, below, the City has designated a combination of "SF-3 and "CS" zoning for this tract. The Agreement's regulations are more permissive than the City's "SF-3" District regulations but generally less permissive than the City's "CS" District.

Safeway Tract

Sections 7.3 and 5.1 E of the Agreement outline specific regulations and prohibited uses for this tract (See Section 4.6 and Appendix C of this report). Under the Agreement, the maximum height of structures for this tract is 3 stories, not to exceed 40 feet. The maximum FAR is 0.45. The maximum impervious coverage allowed is 90% of the gross area of the tract.

The Agreement's regulations for this tract are similar to the site development regulations for the City's "LO" Limited Office zoning designation except that the allowable impervious cover under the Agreement exceeds that permissible under the City's regulations and considerably more uses are permitted under the Agreement, including residential and retail uses, than permitted in the City's "LO", Limited Office designation.

Deep Eddy Tract

Sections 7.4 and 5.1 A of the Agreement outline specific regulations and prohibited uses for this tract (See Section 4.6 and Appendix C of this report). The Agreement imposes a maximum height for structures of three stories, not to exceed 40 feet. The maximum FAR is 0.45. The maximum impervious coverage is 80% of the gross area of the tract. There is a special provision limiting multifamily density to no more than 22 units per acre. There is a required building setback of 35 feet from Lake Austin Boulevard, 50 feet for non residential uses along West Seventh Street and 25 feet along West Seventh Street and Hearn Street for residential development. There is also a special provision prohibiting a direct roadway through this tract connecting any two public streets unless required for safety purposes. There is also a special provision requiring that non residential development be oriented away from West Seventh Street unless the prevailing future uses along West Seventh Street become non-residential. (Sec. 7.4 a, b, c, e, h 2, h 4, h 5 of the Agreement).

The Agreement's regulations are generally more permissive than the City's "SF-3" and "LR" regulations. 80% impervious cover is allowed under the Agreement, substantially more than the maximum 40% that would be allowed under the City's regulations. Note that the building setback requirements under the Agreement (35 feet from Lake

Austin Boulevard, 50 feet from West 7th and Hearn Street for non residential uses) are more restrictive than would be applicable under the City's regulations. With respect to uses, the uses allowed under the Agreement are more permissive than those allowed under the City's "SF-3" and "LR" zoning districts in that multifamily, townhome and more commercial uses are allowed under the Agreement.

Town Lake Tract

Sections 7.4 and 5.1 C of the Agreement outline specific regulations and prohibited uses for this tract (See Section 4.6 and Appendix C of this report).The Agreement imposes a maximum FAR of 0.45. The maximum height for the Brackenridge Apartment Site is 5 stories, not to exceed 65 feet. The maximum height for the Colorado Apartment Site shall not exceed 570 feet above mean sea level elevation for the Site. For each square foot of gross floor area above 5 stories (not to exceed 65 feet in height) on the Colorado Apartment Site, there shall be a reduction of one square foot of otherwise allowable impervious cover on the Colorado Apartment Site.

The Agreement imposes a maximum impervious cover of 75% for the Brackenridge Apartment Site and the Colorado Apartment Site excluding the Primary and Secondary Setback areas as discussed below.

The Agreement imposes certain restrictions within the first 150 feet of Lady Bird Lake, called the "Primary Setback". Within this area, structures and surface or above ground parking is prohibited and maximum impervious cover is limited to 15%. Park related facilities such as trails, gazebos, picnic tables, observation decks and boating and rowing facilities on land dedicated for park purposes shall not be subject to the Primary Setback restrictions.

The Agreement imposes certain restrictions within the area outside of the Primary Set-

back and within 200 feet of Lady Bird Lake, called the Secondary Setback. Within this area, impervious cover is limited to 30% and transition uses are allowed, including fountains, patios, terraces, outdoor restaurants and similar amenities.

There is a special provision requiring that surface parking be oriented along Lake Austin Boulevard and that surface parking be screened along Lake Austin Boulevard at street grade. Underground parking constructed totally below grade can occur anywhere on the tract.

The Field Lab Site is prohibited from being developed for a Non-University purpose during the initial term of the Agreement (until 2019) or any Extension period. (Sec. 7.5 of the Agreement).

The Agreement's regulations and uses are more permissive than allowed under the City's "SF-3" Family Residence zoning designation. The Primary and Secondary setbacks from Lady Bird Lake required under the Agreement are substantially less than those applicable under current City rules. (150' Primary Setback and 50' additional Secondary Setback under the Agreement versus 300' and 100' Primary and Secondary Setbacks under the City's current regulations). Also the maximum height and maximum permitted impervious cover under the Agreement exceeds what would be allowed under the City's "SF-3" regulations. The Agreement also allows commercial and multifamily uses whereas the City's "SF-3" regulations would generally be limited to single family and duplex development.

Golf Course Tract

The Agreement does not address this tract.

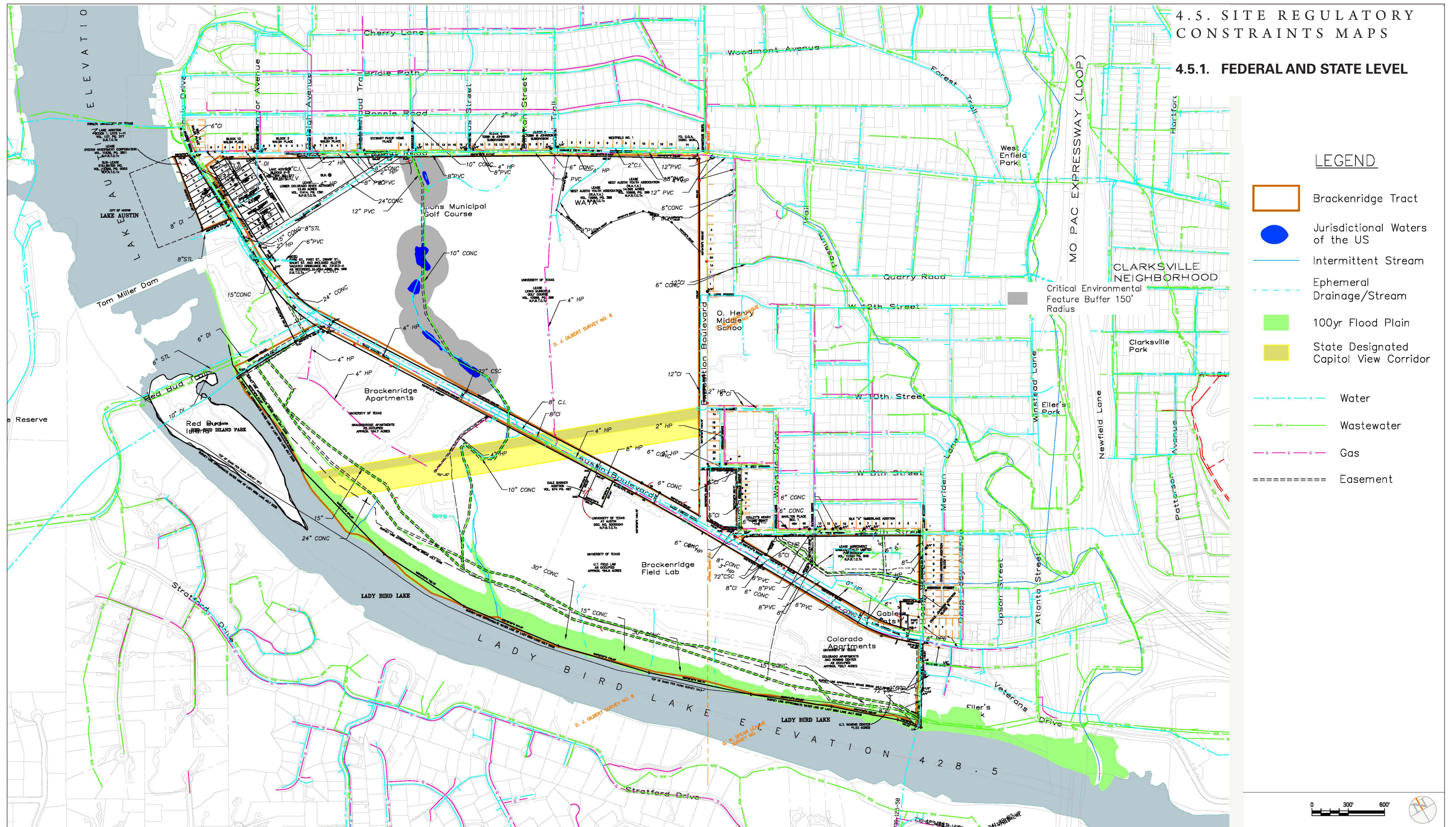
West Austin Youth Association Tract

The Agreement does not address this tract.



4.5. SITE REGULATORY CONSTRAINTS MAPS

4.5.1. FEDERAL AND STATE LEVEL

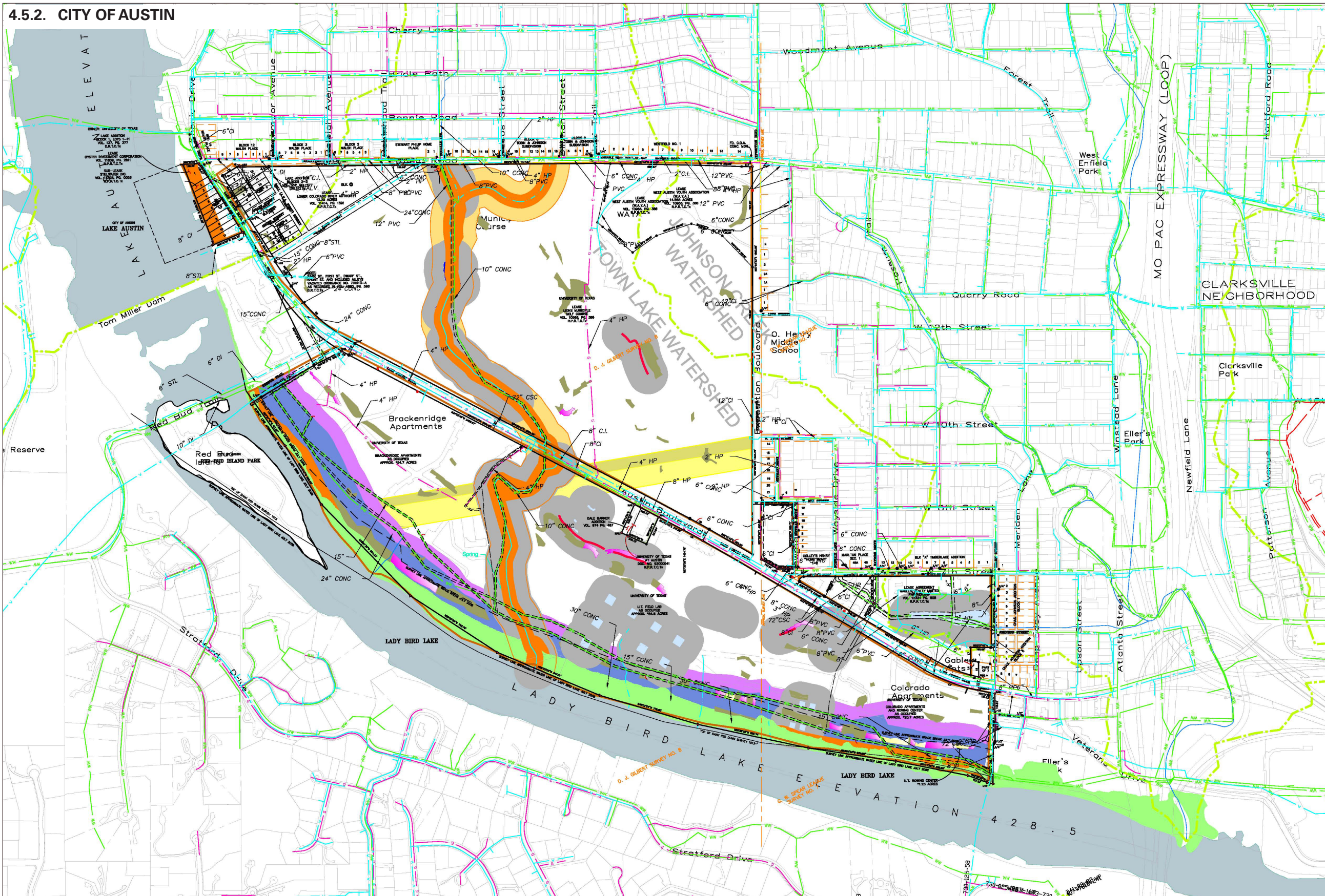


LEGEND

- Brackenridge Tract
- Jurisdictional Waters of the US
- Intermittent Stream
- - - Ephemeral Drainage/Stream
- 100yr Flood Plain
- State Designated Capitol View Corridor
- Water
- Wastewater
- Gas
- Easement

Federal and state level constraints map (Source: K Friese & Associates)

4.5.2. CITY OF AUSTIN



LEGEND

- Brackenridge Tract
- Jurisdictional Waters of the US
- Intermittent Stream
- Ephemeral Drainage/Stream
- COA Designated Water/Wetlands
- Rimrock
- 100yr Flood Plain
- State Designated Capitol View Corridor
- City Designated Capitol View Corridor
- Water
- Wastewater
- Gas
- Easement
- Watershed
- SLOPES 15% to 25%
- SLOPES 25% to 35%
- SLOPES 35% or Greater
- Critical Environmental Feature Buffer 150' Radius
- Critical Water Quality Zone
- Water Quality Transition Zone
- City of Austin Waterfront Overlay
 - Primary Setback
 - Secondary Setback

Notes:

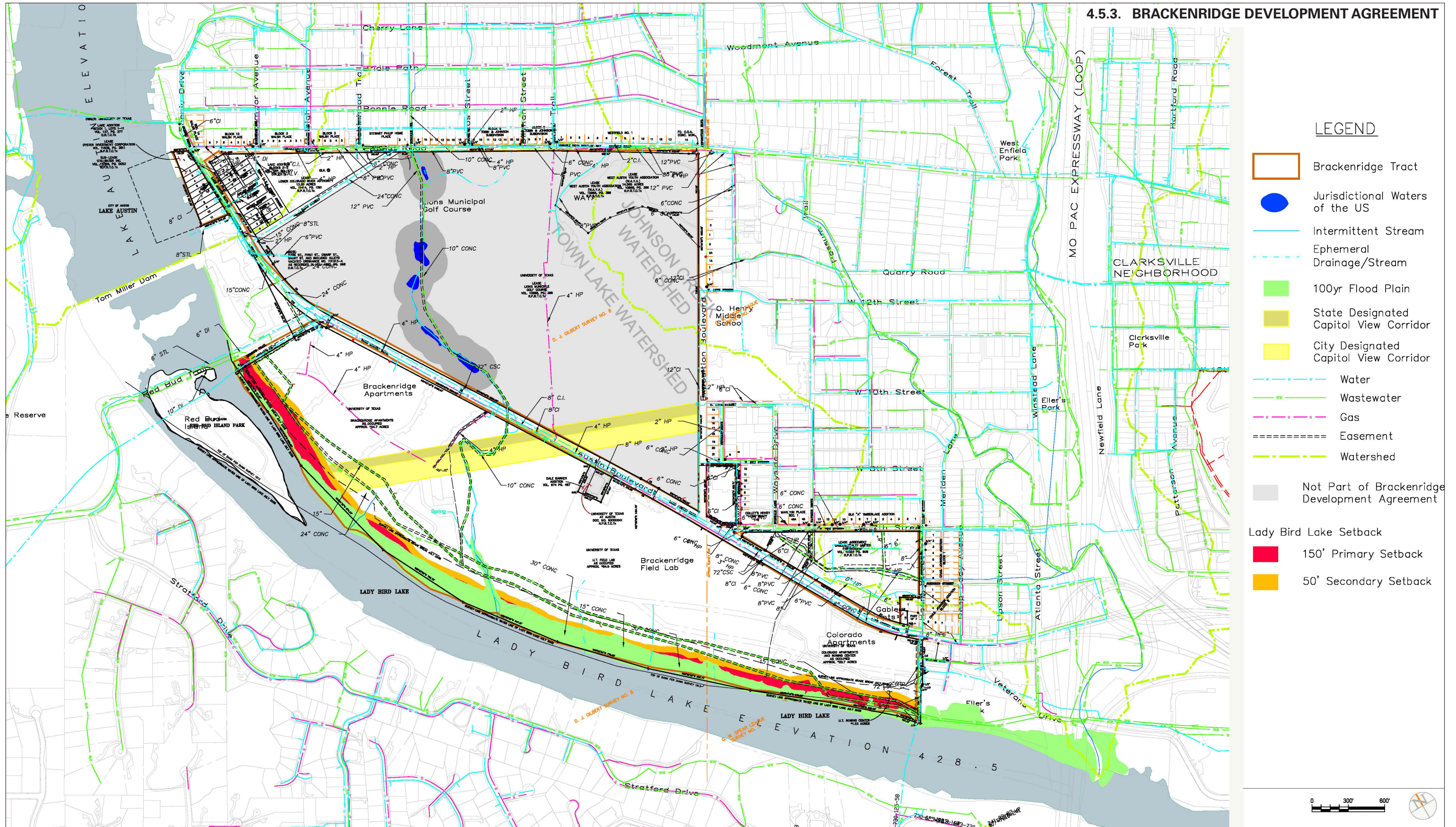
1. Entire tract is located within the Edwards Aquifer, as defined by the COA.
2. Heritage Trees must be preserved in accordance with COA regulations.

0 300' 600'

City of Austin level constraints map (Source: K Friese & Associates)

SITE REGULATORY CONSTRAINTS MAPS

4.5.3. BRACKENRIDGE DEVELOPMENT AGREEMENT



Brackenridge Development Agreement level constraints map (Source: K Friese & Associates)

CONSTRAINTS MAPS - REFERENCE

Capitol View Corridor

Ordinance: LDC 25-2-162

The CAPITOL VIEW CORRIDOR is an area where a vantage point enables a view of the State Capitol Building. In these corridors, the heights of new buildings are restricted in order to preserve the existing view of the Capitol Building. There are two Capitol View Corridors that cross in or near the Brackenridge Tract, Red Bud Trail Corridor #19 and Red Bud Trail State Corridor #35. Red Bud Trail State Corridor #35 is a state defined corridor that is slightly narrower than the city defined Red Bud Trail #19. Because the height restrictions vary depending on the elevation of the vantage point and the elevation of the existing ground of the site, the City of Austin Watershed Protection and Development Review Department was contacted by CAS Consulting & Services Inc in order to determine the height restrictions for the corridors. See Appendix A to this final report for the City's response and the height restriction information.

Water Line

The locations for the existing WATER LINES were determined from the City of Austin GIS department. The maps showing the approximate location of the water lines were gathered from the GIS department website and are included in the appendix to this report.

Wastewater Line

The locations for the existing WASTEWATER LINES were determined from the City of Austin GIS department. The maps showing the approximate location of the wastewater lines were gathered from the GIS department website and are included in the appendix to this report.

Gas Line

The locations for the existing GAS LINES

were gathered from Texas Gas Service. The maps showing the approximate location of the gas lines were requested from Texas Gas Service.

Slopes 15% To 25%

Ordinance: LDC 25-8-62, 25-8-301, 25-8-302

The slope of the existing ground determines if construction can be performed in the area. If the slope is greater than 15 percent but less than 25 percent, then construction of a roadway or driveway is prohibited unless the driveway/roadway is the primary access to at least two contiguous acres with a slope equal or less than 15 percent or building sites for at least five residential units. The following regulations also apply to ground with a slope between 15 and 25 percent: parking areas, excluding parking structures and more than 10% impervious cover on the slope are prohibited, terracing techniques found in the City of Austin Environmental Criteria Manual are required uphill and downhill of the slope and hillside vegetation may not be disturbed except where absolutely necessary for construction and all disturbed areas must be restored with native vegetation after completion of construction. Also, when calculating the net site area, only 40 percent of the land area with a slope between 15 and 25 percent can be included.

Slopes 25% To 35%

Ordinance: LDC 25-8-62, 25-8-302

The slope of the existing ground determines if construction can be performed in the area. If the slope is greater than 25 percent but less than 35 percent, then construction of a roadway or driveway is prohibited unless the driveway/roadway is the primary access to at least two contiguous acres with a slope equal or less than 15 percent or building sites for at least five residential units. The following regulations also apply to ground with a slope between 25 and 35

percent: parking areas, including parking structures and more than 10% impervious cover on the slope are prohibited, terracing techniques found in the City of Austin's Environmental Criteria Manual are required uphill and downhill of the slope and hillside vegetation may not be disturbed except where absolutely necessary for construction and all disturbed areas must be restored with native vegetation after completion of construction. Also, when calculating the net site area, only 20 percent of the land area with a slope between 25 and 35 percent can be included.

Slopes 35% Or Greater

Ordinance: LDC 25-8-62, 25-8-302

The slope of the existing ground determines if construction can be performed in the area. If the slope is greater than 35 percent, then construction of a roadway or driveway is prohibited unless the driveway/roadway is the primary access to at least two contiguous acres with a slope equal or less than 15 percent or building sites for at least five residential units. The following regulations also apply to ground with a slope greater than 35 percent: parking areas, including parking structures and more than 10% impervious cover on the slope are prohibited, terracing techniques found in the City of Austin's Environmental Criteria Manual are required uphill and downhill of the slope and hillside vegetation may not be disturbed except where absolutely necessary for construction and all disturbed areas must be restored with native vegetation after completion of construction. Also, when calculating the net site area, none of the land area with a slope greater than 35 percent can be included.

Critical Environmental Feature

Ordinance: LDC 25-8-1, 25-8-281

A CRITICAL ENVIRONMENTAL FEATURE as defined by the City of Austin is a "feature that is critically important to the protection of environmental resources." Natural forma-

tions identified as critical environmental features include bluffs, canyon rimrocks, caves, sinkholes, springs and wetlands. Critical environmental features must be protected from erosion, sedimentation and high rates of flow by either designing drainage patterns that maintain the catchment areas for point recharge features, described as a "cave, sinkhole, fault, joint or other natural feature that lies over the Edwards Aquifer recharge zone and that may transmit a significant amount of surface water into the subsurface strata," in a natural state or by including special controls where necessary. Other requirements for critical environmental feature protection include that no residential lot may contain or be located within 50 feet of a critical environmental feature and that a 150 foot wide buffer zone be established around each critical environmental feature. Within the designated buffer zone, natural vegetative cover must be retained to the maximum extent possible and prohibited actions include construction, wastewater disposal and irrigation. However, exceptions for construction within the buffer zone include if a yard, hiking trail or approved recharge basin which discharges to a point recharge feature is constructed at least 50 feet from the edge of the critical environmental feature. Exceptions exist for the necessary width of the buffer zone which are: a point recharge feature has a buffer zone that coincides with the catchment basin defined by topography provided that the width is between 150 and 300 feet and an administrative variance can be granted from the City, through an administrative process, given that any proposed measure preserves all characteristics of the critical environmental feature.

Rimrock

Ordinance: LDC 25-8-1

Canyon RIMROCK, as define by the City of Austin, is a "rock substrate that has a gradient that exceeds 60 percent for a vertical

distance of at least four feet and is exposed for at least 50 feet horizontally along the rim of a the canyon". Canyon rimrock is designated as a critical environmental feature; therefore, City codes requiring a 150-foot development setback and allowing no development within the setback are applicable. See critical environmental feature for exceptions to the 150 foot buffer zone width regulation.

Wetland

Ordinance: LDC 25-8-1, 25-8-282; USACE

The City of Austin defines a WETLAND as "transitional land between terrestrial and aquatic systems where the water table is at or near the surface or the land is covered by shallow water" while the US Army Corps of Engineers defines a wetland as "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions". The US Army Corps of Engineers determines if an area is a wetland by studying the vegetation, soil and hydrology to conclude if all three criteria are found in the unknown area. The City of Austin codes protect wetlands by the following:

- Wetlands must be protected in all watersheds except in the central business area.
 - Protection methods for wetlands include:
 - appropriate setbacks that preserve the wetlands or wetland functions;
 - wetland mitigation, including wetland replacement;
 - wetland restoration or enhancement; or
 - use of wetlands for water quality controls.
- The director may approve:
 - the removal and replacement of a

SITE REGULATORY CONSTRAINTS MAPS



wetland; or the elimination of setbacks from a wetland that is proposed to be used as a water quality control. Wetlands fall under the heading of a critical environmental feature; therefore all restrictions applied to a critical environmental feature are also applicable to a wetland.

100 Year Flood Plain

Ordinance: LDC 25-12-3, Section 1612

The 100 YEAR FLOOD PLAIN is the land that will be flooded should a storm having a 1 percent chance of being equaled or exceeded in any given year. Restrictions within the flood hazard area state that all new construction of buildings, structures, portions of buildings and structures, alterations to buildings and structures and improvements and restorations to buildings and structures must be designed and constructed to resist the effects of the flood loads of a 100 year storm. The 100 year flood plain is determined by the Federal Emergency Management Agency in a report dated September 2008 and by the City of Austin based on project full development. The City of Austin has compiled this information and the maps showing the 100 year floodplain can be received from the City of Austin GIS department.

Critical Water Quality Zone

Ordinance: LDC 25-8-91, 25-8-92, 25-8-261

The CRITICAL WATER QUALITY ZONE is an area around the perimeter of a waterway where specific development is restricted and the width of the zone is dependent on the classification of the waterway it is adjacent to. For this project, the waterway classifications are based on the water supply suburban watershed and are as follows: a minor waterway has a drainage area between 128 and 320 acres, an intermediate waterway has a drainage area between 320 and 640 acres, and a major waterway has a drainage area greater than 640 acres.

The boundary of a critical water quality zone is coincident with the outer boundary of the 100 year floodplain. There are several exceptions to the size of the critical water quality zone; these exceptions are listed as follows. The critical water quality zone, from the centerline of the waterway, is between 50 and 100 feet for a minor waterway, between 100 and 200 feet for an intermediate waterway, and between 200 and 400 feet for a major waterway. Also, the critical water quality zones for Lake Austin and Lady Bird Lake have been predetermined. The shoreline boundary for Lake Austin coincides with 492.8 foot contour and for Lady Bird Lake coincides with the 429.0 foot contour. Restrictions in the critical water quality zone include only fences that do not obstruct flood flows, open spaces, excluding parking lots, as long as any use of fertilizers, pesticides, or herbicides is approved by the Watershed Protection and Development Review Department, and along Lake Austin, a boat dock, pier, wharf, or marina and necessary access and appurtenances is permitted and the approval of any chemicals used to treat materials that will be submerged is required from the Watershed Protection and Development Review Department.

Water Quality Transition Zone

Ordinance: LDC 25-8-93

The WATER QUALITY TRANSITION ZONE is an area that is adjacent and parallel to the outer boundary of the all critical water quality zones, except for the water quality zones that border Lake Austin and Lady Bird. The width of the water quality transition zone is dependent upon the type of water way that it is adjacent to, see critical water quality zone for a description of the waterway classifications used. The width of the water quality transition zone is as follows: minor waterway - 100 feet, intermediate waterway - 200 feet, major waterway - 300 feet. For the Brackenridge tract, the only waterway with a water quality transition zone is

Schulle Branch, which drains into Lady Bird Lake classified as a minor waterway.

Waterfront Overlay District

Ordinance: LDC 25-2-175, 25-2-744

The WATERFRONT OVERLAY DISTRICT is designed to promote a harmonious interaction for the transition from urban development to park areas and the shoreline of Lady Bird Lake. The waterfront overlay district applies to all properties within the boundaries stated in the Land Development Code; however the only subdistrict that applies to the Brackenridge Tract is the University/Deep Eddy Subdistrict, which is defined between Tom Miller Dam and MoPac Boulevard. The University/Deep Eddy Subdistrict is further divided with the partition located at Red Bud Trail. Between Tom Miller Dam and Red Bud Trail, a primary setback of 200 feet inland from the shoreline and a secondary setback of 50 feet inland from the edge of the primary setback are required, for a total required setback of 250 feet from the shoreline of Lady Bird Lake. From Red Bud Trail to MoPac Boulevard a 400 foot setback is required; the primary setback being 300 feet landward from the shoreline of Lady Bird Lake and the secondary setback extends 100 feet landward from the primary setback line. Applicable to both areas of the University/Deep Eddy Subdivision are the restrictions that no building in the primary setback, secondary setback, and at any point within 50 feet of the secondary setback line shall be taller than 35 feet and for areas outside the setbacks the maximum allowable impervious cover is 40 percent.

Lady Bird Lake Setback

Brackenridge Development Agreement Section 7

The Brackenridge Development Agreement (1989) has provisions for the setbacks along Lady Bird Lake; these setbacks are only applicable to the Town Lake Tract. Found in Section 7.5 Town Lake Tract, of the Bracken-

ridge Development Agreement, the LADY BIRD LAKE SETBACK (originally called the Town Lake Setbacks) states that the setback line shall be placed at 200 feet from the shoreline of Lady Bird Lake. The setback is divided into two areas, the primary setback, the first 150 feet, and the secondary setback, the last 50 feet. Restrictions for the primary setback area are that structures, portions of a structure, surface parking areas or above ground parking areas are not permitted and the maximum impervious cover allowed is 15 percent of the total for the primary setback region. Within the secondary setback transitional uses including fountains, patios, terraces, outdoor restaurants and similar amenities are allowed while the impervious cover shall be limited to a maximum of 30 percent of the area included within the secondary setback.



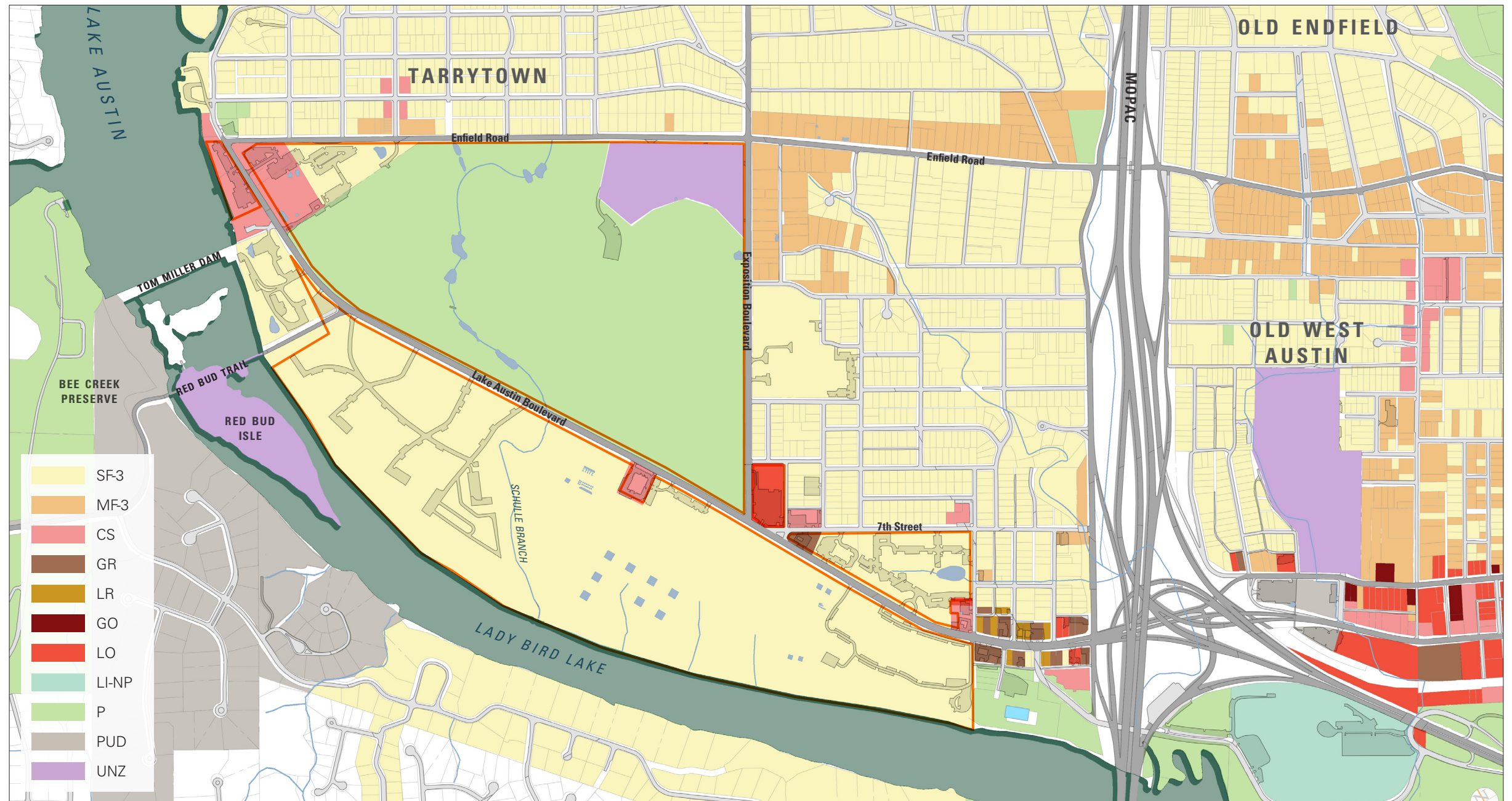
4.6. COMPARISON OF BDA TO CURRENT AND ALTERNATIVE ZONING REGULATIONS

The University of Texas System is a constitutionally mandated agency of the State of Texas and is not subject to City of Austin zoning regulations. Despite this, certain portions of the Brackenridge Tract have been assigned zoning categories by the City. As noted in the following section, some of the zoning categories designated would not allow the uses existing on the various portions of the Tract.

The Brackenridge Tract covers approximately 350 acres of land with 189.13 acres or 55% of the Tract currently regulated by the Brackenridge Agreement. As noted above, the University is exempt from City zoning regulation, including the zoning assigned by the City to portions of the Tract. Also as noted above, the City zoning designations currently assigned to the Tract are largely inappropriate, even for existing uses on the Tract.

Since the adoption of the Brackenridge Agreement in 1989, the City has added a new set of tools which embrace a "new urbanism" style of development and encourage mixed-use developments. An opportunity to incorporate mixed use overlays onto certain base zoning districts gives more potential development tools under City regulations than existed back in 1989.

Alternative potential City zoning districts have been posited for each parcel of the Tract. These alternate suggestions include a mixed-use or residential component. The uses and site development regulations associated with each alternative are included in Section 4.6 or in Appendix C to this final report.



City of Austin Zoning Districts

This section will briefly discuss the attributes of the City zoning categories currently assigned to the affected portions of the Brackenridge Tract as well as potential alternative City zoning categories which could accommodate potential redevelopment scenarios in the event the University chose to comply with current City zoning and site development regulations.

<p>SF-3 Family Residence Height: 35 feet Single Family Dwelling Minimum Lot: 5,750 sq. ft. Duplex Minimum Lot: 7,000 sq. ft.</p>	<p>GR Community Commercial Height: 60 feet (2) Minimum Lot: 5,750 sq.ft. Offices or commercial uses serving neighborhoods and community needs, including unified and individually developed shopping centers or commercial sites; such as service stations, restaurants.</p>	<p>Minimum Lot: 5,750 sq. ft. Offices and selected commercial uses predominantly serving community or city wide needs; such as medical or professional offices.</p>	<p>P Public District Height: Varies (**). Land owned or leased by federal, state, county, or city government.</p>
<p>MF-3 Multi-Family Residence - Medium Density Height: 40 feet (*) Minimum Lot: 8,000 sq. ft. Single Family Dwelling, Duplex, Two Family Dwellings, Townhouses, Apartments up to 36 units per acre</p>	<p>LR Neighborhood Commercial Height: 40 feet (2) Minimum Lot: 5,750 sq.ft. Shopping facilities that provide limited business service and office facilities to the residents of the neighborhood; such as consumer repair services, food sales, pet services.</p>	<p>LO Limited Office Height: 40 feet Minimum Lot: 5,750 sq. ft. Office use predominantly serving neighborhood or community needs; such as professional, semiprofessional, medical offices</p>	<p>PUD Planned Unit Development Height: Varies (**). Planned Unit Development allows for cluster development and alternate design standards. Minimum Site Areas: Inside City - 10 acres recommended. Outside City - 250 acres required.</p>
<p>CS Commercial Services Height: 60 feet (*) Minimum Lot: 5,750 sq. ft. 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</p>	<p>GO General Office Height: 60 feet (*)</p>	<p>LI-NP Limited Industrial Neighborhood Plan LI Limited Industrial Services Height: 60 feet (*) Minimum Lot: 5,750 sq. ft. Commercial services, basic and limited manufacturing, warehousing and distribution.</p>	<p>UNZ Unzoned (*) Height may be limited to when adjacent to more restrictive districts. (**) Height not specified. See Austin City Code Vol. II</p>

COMPARISON OF BDA TO CURRENT AND ALTERNATIVE ZONING REGULATIONS



4.6.1. BOATTOWN TRACT

Current Zoning – “CS” General Commercial Services

The Boat Town Tract is located within the full purpose corporate limits of the City and is currently zoned “CS”, General Commercial Services District, which is a district intended for a commercial or industrial use of a service nature that has operating characteristics or traffic service requirements that are incompatible with residential environments¹. The “CS” district is essentially an intense commercial zoning district which permits a 2.0 FAR with ninety-five (95%) building coverage. For additional information regarding the City’s “CS” development regulations and permitted uses, see Section 4.6 or in Appendix C to this final report.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

Development based upon the City’s current “GR” Community Commercial District and current site development regulations would permit the same types of uses currently on the tract. Furthermore, this type of zoning is compatible to the surrounding development as defined by the City’s Code since “GR” zoning is the designation used for office or other commercial uses that serve neighborhood and community needs and provide access to and from major traffic ways such as Lake Austin Boulevard and Enfield Road. Another potential development alternative assumes that the tract is developed for multifamily use. An “MF-3” Multifamily Residence Medium Density zoning designation is for multifamily uses with a maximum density of up to 36 units per acre, depending on unit size. The criteria for an “MF-3” District considers adjacent multifamily residential development located near supporting transportation and commercial facilities in a centrally located area or in an area for which medium density multifamily use is desired.

Another potential development scenario assumes developing the tract as a mixed use development. A CS-MU District would enhance the zoning currently designated for the site by providing the option to provide residential uses within and throughout the site.

BOAT TOWN TRACT					
REGULATIONS	BDA	CURRENT ZONING	COMPARABLE ZONING DESIGNATIONS		
			Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	Section 7.1	Commercial Services (CS)	Community Commercial (GR)	Multifamily Medium Density (MF-3)	Commercial Services Mixed Use (CS-MU)
Min. Lot Size	None	5,750 SF	5,750 SF	8,000 SF	Article 4: Subchapter E of LDC, See Appendix C
Min. Lot Width	None	50'	50'	50'	"
Max. Floor Area Ratio	0.4	2.0	1.0	0.75	"
Max. Height	40'	60'	60'	40'	"
Min. Setbacks:					"
Front	10' (Lake Austin Blvd.)	10'	10'	25'	"
Rear	none (Lake Austin)	None	None	10'	"
Side (Interior)	None	None	None	5'	"
Side (Street)	None	10'	10'	15'	"
Max. Building Coverage	50% of GA	95% of GFA	75% of GFA	55% of GFA	"
Max. Density				Up to 36 UPA	
Max. Impervious Cover**:					
Zoning Category		95% of NSA	90% of NSA	65% of NSA	"
LA Water Supply Sub. Watershed	80% of GA (Under Development Agreement)	40% of NSA	40% of NSA	40% of NSA	30% of NSA for Single Family & Duplex Uses 40% of NSA for Commercial Uses.
Max. # of Driveways	3 (Lake Austin Blvd.)	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area				1,200 Sq. Ft. for Efficiency - 1,500 Sq. Ft. for One Bedroom - 1,800 Sq. Ft. for Two or More Bedrooms	
Open Space Requirements				Min. 150 Sq. Ft. Per Unit	
Parking:					
Off-site parking	Permitted on Park Street Tract	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4: Subchapter E of LDC, See Appendix C
Off-street parking	See Appendix E	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4: Subchapter E of LDC, See Appendix C
Public Access to Lake Austin	Public access must be provided	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Marina & Dock Requirements*:		(The City of Austin Parks and Recreation Board has jurisdiction over the marina and dock design) - See Appendix C			
Max. Length	400' from shoreline				
Max. Width	325' along shoreline				
Max. Roof Length	125' from shoreline				
Prohibited Uses	Wastewater facilities				
Dock Requirements:		(The City of Austin Parks and Recreation Board has jurisdiction over the marina and dock design) - See Appendix C			
Max. Length	125' from shoreline				
Max. Width	None				
Max. Roof Length	125' from shoreline				
Prohibited Uses	Wastewater facilities				
Design Standards	Reflective roofs prohibited	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C

* Requirements do not apply to public recreational and fishing piers

** Most restrictive maximum impervious cover limitation applies

COMPARISON OF BDA TO CURRENT AND ALTERNATIVE ZONING REGULATIONS

4.6.2. PARK STREET TRACT

Current Zoning – “CS” General Commercial Services & “SF-3” Family Residence

The Park Street Tract is located within the full purpose corporate limits of the City and is currently zoned a combination “CS”, General Commercial Services and “SF-3”, Family Residence District. As discussed above, a “CS”, General Commercial Service District is primarily intended for commercial or industrial uses of a service nature. An “SF-3” District designation permits moderate density single-family residential use or a duplex use on a lot that is a minimum of 5,750 square feet. For additional information regarding “CS” and “SF-3” development regulations and permitted uses, see Section 4.6 or in Appendix C to this final report.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

The alternative zoning recommendations for this tract are “GR” Community Commercial District, “MF-3” Multifamily Residence Medium Density District and “CS-MU” General Commercial Services Mixed Use District. The rationale for these zoning recommendations includes the appropriate zoning designations to maintain current uses as well as provide flexibility to accommodate infill development or redevelopment on the tract.

PARK STREET TRACT						
REGULATIONS	BDA	CURRENT ZONING		COMPARABLE ZONING DESIGNATIONS		
				Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	Section 7.2	Family Residence (SF-3) ***	Commercial Services (CS)	Community Commercial (GR)	Multifamily Medium Density (MF-3)	Commercial Services Mixed Use (CS-MU)
Min. Lot Size	none	5,750 SF ***	5,750 SF	5,750 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	none	50' ***	50'	50'	50'	"
Max. Floor Area Ratio	0.45		2.0	1.0	0.75	"
Max. Height	65' (5 stories)	35' ***	60'	60'	40'	"
Min. Setbacks:						"
Front	35' (Lake Austin Blvd.)	25' ***	10'	10'	25'	"
Rear	10' (Golf Course Tract)	10' ***	none	none	10'	"
Side (Interior)	none	5' ***	none	none	5'	"
Side (Street)	25' for residential uses (Enfield) - 50' commercial *	15' ***	10'	10'	15'	"
Max. Building Coverage	50% of GA	40% of GFA ***	95% of GFA	75% of GFA	55% of GFA	"
Max. Density					Up to 36 UPA	
Max. Impervious Cover**	80% of GA (Under Development Agreement)					
Zoning Category		45% of NSA ***	95% of NSA	90% of NSA	65% of NSA	"
LA Water Supply Sub. Watershed		30% of NSA ***	40% of NSA	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses 40% of NSA for Commercial Uses
Max. # of Driveways	3 (Lake Austin Blvd.) 1 (Enfield)***	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area					1,200 Sq. Ft. for Efficiency - 1,500 Sq. Ft. for One Bedroom -1,800 Sq. Ft. for Two or More Bedrooms	
Open Space Requirements					Min. 150 Sq. Ft. Per Unit	
Parking:						
Off-street parking	See Appendix C	2 spaces per dwelling unit (min.)	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	none	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C

* As applicable only to a 50 foot Building Setback Line along Enfield Road, the first 25 feet from Enfield Road shall have landscape and screening; it may also contain sidewalks and privacy fences. The area between 25 feet and 50 feet from Enfield Road may contain surface parking. The entire 50 foot building setback area may be used for recreational purposes. The requirements of this Section 7.2.d. are not applicable to the area contained within a 25 foot Building Setback Line for residential.

** Most restrictive max. impervious cover limitation applies

*** One driveway shall be permitted along Enfield Road, if the driveway is required for safety purposes, provided, however, that single family and duplex lots may each have one driveway onto Enfield Road.

*** Subject to additional development regulations pursuant to Sec 25-2; Subchapter E (Residential Design and Compatibility Standards) of the LDC

Additional Brackenridge Development Agreement Regulations:

1. Non-residential development shall be oriented away from Enfield Road;
2. Development for multifamily use shall be limited to a maximum of 22 units per acre.

4.6.3. SAFEWAY TRACT

Current Zoning – “LO” Limited Office

The Safeway Tract is located within the full purpose corporate limits of the City and is currently zoned “LO”, Limited Office District. This district is intended for office uses that serve neighborhood or community needs and that are located in or adjacent to residential neighborhoods. For additional information regarding “LO” development regulations and permitted uses, see Section 4.6 or in Appendix C to this final report.

The existing grocery store use on the site is considered a “Food Sales” use by the City's LDC. Note that this use would not be permitted in the “LO” zoning district because this district doesn't allow retail uses.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

The alternative zoning recommendations for this tract are “GR” Community Commercial District, “MF-3” Multifamily Residence Medium Density District and “CS-MU” General Commercial Services Mixed Use District. The rationale behind these zoning recommendations considers the appropriate zoning designations to maintain current uses as well as provide flexibility to accommodate infill development or redevelopment on the tract.

SAFEWAY TRACT					
REGULATIONS	BDA	CURRENT ZONING	COMPARABLE ZONING DESIGNATIONS		
			Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	Section 7.3	Limited Office (LO)	Community Commercial (GR)	Multifamily (MF-3)	Commercial Services (CS-MU)
Min. Lot Size	none	5,750 SF	5,750 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	none	50'	50'	50'	"
Max. Floor Area Ratio	0.45	0.7	1.0	0.75	"
Max. Height	40' or (3 stories)	40' or (3 stories)	60'	40'	"
Min. Setbacks:					"
Front	35' (Lake Austin Blvd.)	25'	10'	25'	"
Rear	25' (West 8th St.)	5'	none	10'	"
Side (Interior)	25' (Newman St.)	5'	none	5'	"
Side (Street)	15' (Exposition Blvd.)	15'	10'	15'	"
Max. Building Coverage	50% of GA	50% of GFA	75% of GFA	55% of GFA	"
Max. Density				Up to 36 UPA	
Max. Impervious Cover*:	90% of GA (Under Development Agreement)				
Zoning Category		70% of NSA	90% of NSA	65% of NSA	"
LA Water Supply Sub-Watershed		40% of NSA	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses 40% of NSA for Commercial Uses
Max. # of Driveways	2 (Lake Austin) - 1 (Newman Drive) - 2 (Exposition Blvd.)	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area				1,200 Sq. Ft. for Efficiency - 1,500 Sq. Ft. for One Bedroom - 1,800 Sq. Ft. for Two or More Bedrooms	
Open Space Requirements				Min. 150 Sq. Ft.	
Parking:					
Off-street parking	See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	none	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C

* Most restrictive max. impervious cover limitation applies



4.6.4. DEEP EDDYTRACT

Current Zoning – “LR” Neighborhood

Commercial and “SF-3” Family Residence
The Deep Eddy Tract is located within the full purpose corporate limits of the City and is currently zoned a combination of “LR”; Neighborhood Commercial District, and “SF-3”; Family Residence District. An “LR”; Neighborhood Commercial District is intended for commercial uses that provides business services and office facilities for the residents of a neighborhood. An “SF-3” District Designation permits moderate density single-family residential use or a duplex use on a lot that is a minimum of 5,750 square feet. For additional information regarding “LR” and “SF-3” development regulations and permitted uses, see Section 4.6 or in Appendix C to this final report.

Note that current multifamily development would not be permitted under the “SF-3” zoning assigned to that portion of the tract.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

The alternative zoning recommendations reflect the existing uses on the tract. The Agreement effectively limits densities on the site to 22 units per acre, which is similar to an “MF-2” Low Density District designation. More intense multifamily zoning districts are recommended in order to benefit from the more favorable FAR, height and setback restrictions if solely multifamily were to remain on the sight. The “CS-MU” designation would provide flexibility to the site to allow commercial uses on the tract.

DEEP EDDYTRACT						
REGULATIONS	BDA	CURRENT ZONING		COMPARABLE ZONING DESIGNATIONS		
				Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	7.4	Neighborhood Commercial (LR)	Family Residence (SF-3) **	Multifamily Medium Density (MF-3)	Multifamily Medium Density (MF-4)	Commercial Services Mixed Use (CS-MU)
Min. Lot Size	None	5,750 SF	5,750 SF **	8,000 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	None	50'	50' **	50'	50'	"
Max. Floor Area Ratio	0.45	0.50		0.75	0.75	"
Max. Height	40' or (3 stories)	40' or (3 stories)	35' **	40'	60'	"
Min. Setbacks:						"
Front	35' (Lake Austin Blvd.)	25'	25' **	25'	15'	"
Rear	50' for non-residential uses & 25' for Residential uses (West 7th St.)	None	10' **	10'	10'	"
Side (Interior)	None	None	5' **	5'	5'	"
Side (Street)	50' for non-residential uses & 25' for Residential uses (Hearn St.)	15'	15' **	15'	15'	"
Max. Building Coverage	50% of GA	50% of GFA	40% of GFA **	55% of GFA	60% of GFA	"
Max. Density				Up to 36 UPA	36-54 UPA	
Max. Impervious Cover*:	80% of GA (Under Development Agreement)					
Zoning Category		80% of NSA	45% of NSA **	65% of NSA	70% of NSA	"
LA Water Supply Sub. Watershed		40% of NSA	30% of NSA **	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses; 40% of NSA for Commercial Uses.
Max. # of Driveways	5 (Lake Austin) 3 (West 7th St.) 1 (Hearn St.)	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area				1,200 Sq. Ft. for Efficiency - 1,500 Sq. Ft. for One Bedroom - 1,800 Sq. Ft. for Two or More Bedrooms	800 Sq. Ft. for Efficiency - 1,000 Sq. Ft. for One Bedroom - 1,200 Sq. Ft. for Two or More Bedrooms	
Open Space Requirements				Min. 150 Sq. Ft. Per Unit	Min. 100 Sq. Ft. Per Unit	
Parking:						
Off-street parking	See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	2 spaces per dwelling unit (min.)	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	None	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC. See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C	See Appendix C

* Most restrictive maximum impervious cover limitation applies

** Subject to additional development regulations pursuant to Section 25-2; Subchapter E (Residential Design and Compatibility Standards) of the LDC

Additional Brackenridge Development Agreement Regulations:

1. Landscape screening shall be provided within the first 25 feet from the right-of-way along West 7th Street and Hearn St.
2. No direct traffic through the tract connecting any two public streets shall be allowed, unless required for safety purposes. It is the intent of the parties to discourage traffic flow across the Tract and various methods including, without limitation, crash gates and circuitous routes, may be used;
3. Area for stormwater detention, if required, shall be incorporated into the site plan for Deep Eddy Tract;
4. Non-residential development will be oriented away from West 7th Street unless prevailing future uses along West 7th Street become non-residential;
5. Development density for multifamily use shall not exceed 22 units per acre.

COMPARISON OF BDA TO CURRENT AND ALTERNATIVE ZONING REGULATIONS



4.6.5. TOWN LAKE TRACT

Current Zoning – "SF-3" Family Residence

The Town Lake Tract is located within the full purpose corporate limits of the City and is currently zoned "SF-3", Family Residence District. An "SF-3" District Designation permits moderate density single-family residential use or a duplex use on a lot that is a minimum of 5,750 square feet. For additional information regarding "SF-3" development regulations and permitted uses, see Section 4.6 or in Appendix C to this final report.

Neither the Brackenridge Apartments nor the Colorado Apartments would be permitted as uses under "SF-3". The Field Lab would likely be classified as "College and University Facilities"; a civic use that would normally require a conditional use permit under the City's regulations¹.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

The alternative zoning recommendations reflect the existing uses on the Brackenridge Apartments and Colorado Apartments site. The Agreement effectively limits densities on the site to 16 units per acre, which is similar to an "MF-1" Limited Density District designation. More intense multi-family zoning districts are recommended in order to benefit from the more favorable FAR, height and setback restrictions if solely multifamily were to remain on the site. The "CS-MU" designation would provide flexibility to the site to allow commercial uses on the tract.

¹ Austin, Tex., Land Development Code §§ 25-2-6 (B) (6); 25-2-491.

TOWN LAKE TRACTS					
REGULATIONS	BDA	CURRENT ZONING	COMPARABLE ZONING DESIGNATIONS		
			Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	7.5	Family Residence (SF-3) ****	Multifamily Medium Density (MF-3)	Multifamily Medium Density (MF-4)	Commercial Services Mixed Use (CS-MU)
Min. Lot Size	None	5,750 SF ****	8,000 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	None	50' ****	50'	50'	"
Max. Floor Area Ratio	0.45		0.75	0.75	"
Max. Height	65' (5 stories) on Brackenridge Apts. - 570' above MSL on Colorado Apts. Parcel*	35' ****	40'	60'	"
Min. Setbacks:					"
Front	50' (Lake Austin Blvd.)	25' ****	25'	15'	"
Rear	200' (Lake Austin Blvd.)**	10' ****	10'	10'	"
Side (Interior)	25' (Red Bud Trail)	5' ****	5'	5'	"
Side (Street)	25' (Hearn St.)	15' ****	15'	15'	"
	The Building-Setback Line along Schulle Branch shall be the 10-Year Floodplain or 10 feet from the high bank, whichever is greater.				
Max. Building Coverage	50% of GA	40% of GFA ****	55% of GFA	60% of GFA	"
Max. Density			Up to 36 UPA	36-54 UPA	
Max. Impervious Cover:	75% of GA (excluding setback areas)**				
Zoning Category		45% of NSA ****	65% of NSA	70% of NSA	"
LA Water Supply Sub. Watershed		30% of NSA ****	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses; 40% of NSA for Commercial Uses.
Max. # of Driveways	See Appendix C (Lake Austin Blvd.) C (Red Bud Trail - emergency only)	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area			1,200 Sq. Ft. for Efficiency - 1,500 Sq. Ft. for One Bedroom - 1,800 Sq. Ft. for Two or More Bedrooms	800 Sq. Ft. for Efficiency - 1,000 Sq. Ft. for One Bedroom - 1,200 Sq. Ft. for Two or More Bedrooms	
Open Space Requirements			Min. 150 Sq. Ft. Per Unit	Min. 100 Sq. Ft. Per Unit	
Parking:					
Off-street parking	***	2 spaces per dwelling unit (min.)	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	Exterior mirrored glass and/or reflective roofs are prohibited	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	See Appendix C	See Appendix C	See Appendix 1	See Appendix 1	See Appendix 1
Town Lake Waterfront Overlay:	Not applicable	University/Deep Eddy Sub-district	University/Deep Eddy Sub-district	University/Deep Eddy Sub-district	University/Deep Eddy Sub-district
Primary Setback	150' from Shoreline **	300' from Shoreline	300' from Shoreline	300' from Shoreline	300' from Shoreline
Secondary Setback	50' from Primary Setback Line	100' from Primary Setback	100' from Primary Setback	100' from Primary Setback	100' from Primary Setback
Max. Height		35' (w/in setbacks and 50' of the secondary setback line)	35' (w/in setbacks and 50' of the secondary setback line)	35' (w/in setbacks and 50' of the secondary setback line)	35' (w/in setbacks and 50' of the secondary setback line)
Max. Floor Area Ratio	0.45	May not be increased under § 25-2-714, See Appendix C	May not be increased under § 25-2-714, See Appendix C	May not be increased under § 25-2-714, See Appendix C	May not be increased under § 25-2-714, See Appendix C
Max. Impervious Cover	15% w/in Primary Setback** 30% w/in Secondary Setback**	40% for an area not included in setbacks.	40% for an area not included in setbacks.	40% for an area not included in setbacks.	40% for an area not included in setbacks.
Capitol View Corridor	Red Bud Trail	Red Bud Trail	Red Bud Trail	Red Bud Trail	Red Bud Trail

* For each square foot of additional gross floor area above five stories not to exceed sixty-five feet on the Colorado Apartment Parcel, there shall be a reduction of one square foot of allowable impervious cover on the Colorado Apartment Parcel.

** Within the first 150 feet from Town Lake ("Primary Setback") of the total 200 foot Town Lake Setback Line, no surface or above ground parking area, structure or portion of a structure may be located on any land. This shall not however apply to park related facilities including, without limitation, picnic tables, observation decks, trails, gazebos, pavilions, facilities and boat-houses for rowing activities or similar amenities located on land dedicated or used for park purposes. Maximum impervious cover in the Primary Setback area shall be fifteen percent (15%). Within the 200 feet Town Lake Setback Line, the 50 feet most distant from Town Lake shall be known as the Secondary Setback area. Within the Secondary Setback area transition uses, including without limitation, fountains, patios, terraces, outdoor restaurants or similar amenities shall be allowed. Impervious cover shall be limited to thirty percent (30%) of the area within the Secondary Setback area.

*** Surface parking should be oriented along Lake Austin Blvd. and shall be screened along Lake Austin Blvd. at street grade. This screening shall include dense massing of trees or shrubs, other wall or vegetative screening or berms. Topographic changes shall be considered. Underground parking structure, constructed totally below grade can occur anywhere within the Tract. Parking and structures above grade shall be creatively integrated architecturally with the building.

**** Subject to additional development regulations pursuant to Sec 25-2; Subchapter E (Residential Design and Compatibility Standards) of the LDC

Additional Brackenridge Development Agreement Regulations:

1. Development density for multifamily use shall not exceed 16 units per acre.
2. The University shall use the Town Lake Comprehensive Plan as adopted by the City Council on January 26, 1989 as a guideline for the development of walks, trails, parkways, and open spaces in the Development of the Tract.
3. Until Temporary Erosion Controls are in place, there shall be no clearing pursuant to a Site Development Plan within the Setback areas described in Section 7.5.g.5., except clearing for surveys.
4. All on site utilities shall be located underground unless otherwise required by the utility providing the service.
5. Trash receptacles, air conditioning and heating equipment, utility meters, loading areas, and external storage shall be screened from public right-of-way and Town Lake.
6. The Biological Field Laboratory may not be developed for Non-University Purpose during the initial term or any Extension Period as described in Section 16.3 of the Development Agreement. The Colorado Apartment Parcel may not be developed for Non-University Purpose any earlier than May 26, 1999. The Brackenridge Apartment Parcel may not be developed for Non-University Purpose any earlier than May 26, 2009.

COMPARISON OF BDA TO CURRENT AND ALTERNATIVE ZONING REGULATIONS

4.6.6. GOLF COURSETRACT

Current Zoning

The Golf Course Tract is located within the full purpose corporate limits of the City and is currently zoned “P”, Public District. A “P” District Designation permits governmental, civic, public service, or public institution uses. Pursuant to the City Code “a P district designation may be applied to a use located on property used or reserved for a civic or public institutional purpose or for a major public facility, regardless of ownership of the land on which the use is located.”¹ For additional information regarding “P” development regulations and permitted uses, see the Golf Course Tract Exhibit in Appendix C to this final report.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

Determining the comparable zoning for vacant land of this acreage in a developed neighborhood requires further thorough analysis. Alternatives posited are for “CR” Commercial Recreation, “MF-4,” Moderate-High Density, and “CS-MU. The alternatives would allow for consideration of a recreational based alternative, a moderate to high density multifamily alternative and a commercial/mixed use alternative.

GOLF COURSETRACT					
REGULATIONS	BDA	CURRENT ZONING	COMPARABLE ZONING DESIGNATIONS		
			Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning District	Not applicable	Public (P)	Community Recreation (CR)	Multifamily (MF-4)	Commercial Services (CS-MU)
Min. Lot Size	"	§ 25-2-625 of LDC*	20,000 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	"	§ 25-2-625 of LDC*	50'	50'	"
Max. Floor Area Ratio	"	§ 25-2-625 of LDC*	0.25	0.75	"
Max. Height	"	§ 25-2-625 of LDC*	40'	60'	"
Min. Setbacks:					
Front	"	§ 25-2-625 of LDC*	50'	15'	"
Rear	"	§ 25-2-625 of LDC*	20'	10'	"
Side (Interior)	"	§ 25-2-625 of LDC*	20'	5'	"
Side (Street)	"	§ 25-2-625 of LDC*	50'	15'	"
Max. Building Coverage	"	§ 25-2-625 of LDC*	25% of GFA	60% of GFA	"
Max. Density	"	§ 25-2-625 of LDC*		36-54 UPA	
Max. Impervious Cover**:	"				
Zoning Category		§ 25-2-625 of LDC*	60% of NSA	70% of NSA	"
LA Water Supply Sub-Watershed		§ 25-2-625 of LDC*	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses 40% of NSA for Commercial Uses
Max. # of Driveways	"	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area	"	§ 25-2-625 of LDC*		800 Sq. Ft. for Efficiency Unit - 1,000 Sq. Ft. for One Bedroom - 1,200 for Two or More Bedrooms	
Open Space Requirements	"	§ 25-2-625 of LDC*		Min. 100 Sq. Ft. Per Unit	
Parking:					
Off-street parking	"	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	"	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	"	See Appendix C	See Appendix C	See Appendix C	See Appendix C
Capital View Corridor	Red Bud Trail	Red Bud Trail	Red Bud Trail	Red Bud Trail	Red Bud Trail

* § 25-2-625 Public (P) District Regulations

- A. This section applies in a public (P) district, except for a community events use.
- B. Entities described in Section 25-2-145 (Public (P) District Designation) must comply with the requirements of this section.
- C. For a residential use, the site development regulations of the most comparable residential zoning district apply.
- D. Except as provided in Subsection (E), this Subsection applies to non-residential use.
 - 1. For a site less than one acre, the site development regulations of an adjoining zoning district apply for a distance of 100 feet into the site. The minimum lot size requirement of an adjoining zoning district does not apply to a use by the City.
 - 2. For a site of one acre or more, the site development regulations are established by the approval of a conditional use site plan.
- E. This subsection applies to a parks and recreation services (special) use.
 - 1. The minimum site area is 10 acres.
 - 2. Except for the requirement of Subsection (D)(1), the site development regulations are established by the approval of a conditional use site plan.
 - 3. Locations for the sale of beer or wine, if any, must be identified on the site plan.
 - 4. The Land Use Commission may not consider a site plan until it receives a recommendation from the Parks and Recreation Board.

¹ ID. at § 25-2-145.

4.6.7. W.A.Y.A. (WEST AUSTIN YOUTH ASSOCIATION) TRACT

Current Zoning

The W.A.Y.A Tract is located within the full purpose corporate limits of the City and is currently unzoned.

Alternative Potential Redevelopment Scenarios Using Current City Regulations

The appropriate zoning district for the recreational uses conducted on this tract is a "GR" Community Commercial district. The other alternatives posited are for "MF-4" Moderate-High Density and for "CS-MU".

W.A.Y.A. TRACT					
REGULATIONS	BDA	CURRENT ZONING	COMPARABLE ZONING DESIGNATIONS		
			Comparable Zoning w/ Existing Development	Comparable Zoning w/ Residential Development	Comparable Zoning w/ Mixed Use Development
Provision/Zoning Districts	Not applicable	Unzoned (UNZ)	Community Commercial (GR)	Multifamily (MF-4)	Commercial Services (CS-MU)
Min. Lot Size	"	Requires re-zoning	5,750 SF	8,000 SF	Article 4; Subchapter E of LDC, See Appendix C
Min. Lot Width	"	"	50'	50'	"
Max. Floor Area Ratio	"	"	1.0	0.75	"
Max. Height	"	"	60'	60'	"
Min. Setbacks:					"
Front	"	"	10'	15'	"
Rear	"	"	none	10'	"
Side (Interior)	"	"	none	5'	"
Side (Street)	"	"	10'	15'	"
Max. Building Coverage	"	"	75% of GFA	60% of GFA	"
Max. Density	"	"		From 36-54 UPA	Article 4; Subchapter E of LDC, See Appendix B
Max. Impervious Cover:	"				
Zoning Category		"	90% of NSA	70% of NSA	"
LA Water Supply Sub. Watershed		"	40% of NSA	40% of NSA	30% NSA for Single Family & Duplex Uses 40% of NSA for Commercial Uses
Max. # of Driveways	"	"	Determined at Site Plan	Determined at Site Plan	Determined at Site Plan
Min. Site Area	"	"		800 sq. ft. for Efficiency Unit - 1,000 sq. ft. for a One Bedroom Unit - 1,200 sq. ft. for Two or More Bedrooms	Article 4; Subchapter E of LDC, See Appendix C
Open Space Requirement	"	"		Min. 100 sq. feet Per Unit	Article 4; Subchapter E of LDC, See Appendix C
Parking:					
Off-street parking	"	"	Chapter 25-6 & Appendix A of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C	Article 4; Subchapter E of LDC, See Appendix C
Design Standards	"	"	Sec. 25-2; Subchapter E of LDC, See Appendix C	Sec. 25-2; Subchapter F of LDC, See Appendix C	Sec. 25-2; Subchapter E and F of LDC, See Appendix C
Permitted Land Uses	"	"	See Appendix C	See Appendix C	See Appendix C



4.7. INNOVATIVE DEVELOPMENT REGULATIONS

Since adoption of the Brackenridge Development Agreement in 1989, there have been a number of innovative regulatory concepts that have been adopted locally and nationally that the University may consider incorporating in the development of a significant urban infill site such as the Brackenridge Tract. Some examples of these regulatory concepts are discussed below. The examples discussed below include concepts intended to promote affordable and/or student housing, the use of environmentally conscious and energy efficient materials, and concepts promoting dense, mixed use, and pedestrian oriented development. The University may choose to incorporate some or all of these concepts as an addition to the development standards adopted pursuant to the Brackenridge Development Agreement, or as part of a comprehensive new set of development standards for the Brackenridge Tract.

The following are examples of development standards, not included in the current Brackenridge Development Agreement, which could be implemented to promote or require innovation in the redevelopment of the Brackenridge Tract.

4.7.1. AFFORDABLE HOUSING (STUDENT HOUSING)

The inclusion of affordable housing, which can be designated for use exclusively by students, in urban redevelopment projects is widespread due not only to the inherent benefit of increased diversity that affordable housing facilitates, but also often due to additional entitlements that may be obtained through zoning schemes that promote affordable housing. Zoning schemes will often promote the inclusion of affordable housing

by either: providing development bonuses (additional entitlements) or supplemental funding that increases incrementally with the amount of affordable housing units provided in the project; or requiring the inclusion of affordable housing as a threshold requirement for obtaining additional entitlements. The City's LDC currently contains zoning schemes of both varieties, including the University North Overlay District ordinance, the Vertical Mixed Use overlay district ordinance, the Planned Unit Development ordinance and the Transit Oriented Development ordinance.

The University North Overlay ("UNO") district was created in 2004 to promote high-density, pedestrian-friendly redevelopment of the area adjacent to the University of Texas Austin campus, known as "West Campus." This ordinance, as amended, is provided in Appendix C of this final report. To better serve the housing needs of university students and staff, the UNO district promotes the inclusion of affordable housing units in redevelopment projects through both schemes discussed above. All multi-family residential projects located within the overlay district must provide a minimum percentage of affordable housing in order to take advantage of the increased entitlements provided by the ordinance¹. Additionally, the height of some multi-family residential projects within the district may be increased if the "affordability" of the required affordable housing is increased².

The Vertical Mixed Use ("VMU") overlay district ordinance, enacted in 2006, provides for the development of vertically mixed-use buildings containing a residential component and office and/or retail components³. This ordinance, as amended, is provided in Appendix C of this final report. An owner of

¹ ID. at § 25-2-765.

² ID. at § 25-2-756(B).

³ ID. at § 25-2, Subchapter E., §§ 4.2.2.(A), 4.3.3.(B).

property within a VMU overlay district may opt-in to the application of the ordinance, thereby obtaining additional building coverage and FAR and reduced parking requirements by meeting the requirements of the ordinance⁴. The reservation of a portion of the residential component of a VMU project for affordable housing is among the requirements of the ordinance⁵. A minimum of ten percent of all residential units within a VMU project must be reserved for affordable housing, the level of affordability being greater for rental units than owner-occupied units⁶.

The Planned Unit Development ("PUD") ordinance, amended in 2008, promotes innovative design and the provision of public facilities and services in both greenfield and infill projects alike⁷. This ordinance, as amended, is provided in Appendix C of this final report. Often a vehicle for larger scale, complex projects, PUD zoning is only available for projects that are proved to be "superior" to those achievable under conventional zoning and subdivision regulations⁸. The PUD ordinance promotes the provision of affordable housing by including it as one of a number of criteria used to determine whether the project is "superior" and, therefore, a project for which PUD zoning may be obtained⁹. The PUD ordinance also promotes the provision of affordable housing by providing development bonuses in the form of additional height, additional FAR and additional building coverage for projects that include a specified percentage of affordable housing units within its residential components.¹⁰

⁴ ID. at § 25-2, Subchapter E., § 4.3.3.(F).

⁵ ID. at § 25-2, Subchapter E., § 4.3.3.(F).

⁶ ID.

⁷ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 1.1.

⁸ ID.

⁹ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 2.4.

¹⁰ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 2.5.

The Transit Oriented Development ("TOD") ordinance, promulgated in 2005, establishes zoning districts that provide for development that is "compatible with and supportive of public transit and a pedestrian-oriented environment."¹¹ This ordinance, as amended, is provided in Appendix C of this final report. Site-specific plans for each TOD are required to include a housing affordability analysis that includes stated strategies for meeting recommended affordable housing benchmarks¹². The TOD ordinance also prohibits increased building heights in projects located in certain zones within the City unless the project is required to meet the ordinance's recommended affordable housing benchmarks¹³.

4.7.2. ENVIRONMENTALLY CONSCIOUS/ENERGY EFFICIENT

It is common for urban redevelopment projects to include environmentally conscious and/or energy efficient components, where feasible, to minimize environmental impact, to obtain additional entitlements, and to reduce long-term utility and maintenance costs. Available options include the implementation of enhanced water quality controls, use of innovative building materials and design, landscaping with native plants, rainwater harvesting, and chemical-free pest management practices. Zoning schemes generally establish minimum requirements for all projects while encouraging the implementation of additional measures through the provision of development bonuses. The City's PUD ordinance, UNO ordinance and Traditional Neighborhood District ("TND") ordinance establish minimum environmental and energy efficiency requirements for new projects. Additionally, the City's PUD ordinance and VMU overlay district ordinance incentivize the inclusion of additional measures by awarding development bonuses.

¹¹ ID. at § 25-2-147.

¹² ID. at § 25-2-766.22(C)(7).

¹³ ID. at § 25-2-766.23.

The PUD ordinance, as discussed above, establishes a flexible zoning category for "superior" projects¹⁴. As such, the PUD ordinance not only requires that projects meet the minimum City requirements for water quality controls¹⁵, but it requires a one-star rating under the City's Austin Energy Green Building PUD Worksheet, provided in Appendix C of this final report, in order to be deemed "superior."¹⁶ The ordinance then provides for additional entitlements in the form of additional height, additional FAR and additional building coverage for projects that obtain an Austin Energy Green Building PUD Worksheet rating of three stars or higher and/or use innovative water quality controls that exceed minimum water quality requirements through the treatment of at least 25% additional water volume and removal of an additional 20% of water pollutants¹⁷.

The UNO ordinance, also discussed above, establishes a baseline requirement that all multi-family residential projects located within the overlay district achieve at least a one-star rating under the City's Austin Green Building Program, provided in Appendix C of this final report. However, the UNO ordinance does not provide for additional height or other development bonuses for projects that exceed a one-star rating under this program.

The TND ordinance, enacted in 1997, establishes a zoning district providing for the development of land as a traditional neighborhood through the diversification and integration of residential, commercial and rec-

¹⁴ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 1.1.

¹⁵ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 2.4.

¹⁶ ID.

¹⁷ ID. at § 25-2, Subchapter B, Division 5, Subpart A, § 2.5.



reational uses in a compact development¹. This ordinance, as amended, is provided in Appendix C of this final report. The TND ordinance requires that all residential dwelling units constructed within this zoning district obtain at least a one-star rating under the City's Austin Green Building Program². Additionally, the developers of multi-family and commercial developments within a TND are encouraged, but not required, to design their projects in a manner that obtains a one-star rating under the program³.

Within some VMU overlay districts, developers of VMU projects can obtain greater density through the implementation of environmental safeguards⁴. A site with existing impervious cover in excess of that amount currently allowed may be redeveloped with the increased impervious cover so long as current water quality requirements are met and the following environmentally conscious elements are integrated into the project: rainwater collection, harvesting and use for irrigation or other purposes; use of pervious pavement for pedestrian surfaces (i.e., sidewalks, patios, hike/bike trails) to allow for percolation of rainwater into the underlying soil; implementation of an integrated pest management program using less harmful methods of managing on-site insect and rodent populations; and landscaping the site with native and adapted plant species to reduce water consumption⁵.

4.7.3. PEDESTRIAN-ORIENTED

Pedestrian-oriented design provides for a

¹ ID. at § 25-3-2.

² ID. at § 25-3-87(B) (referencing Traditional Neighborhood District Criteria Manual, Chapter 8: Green Builder Standards).

³ Traditional Neighborhood District Criteria Manual, § 8.1.

⁴ Austin, Tex., Land Development Code § 25-2, Subchapter E., §§ 4.3.4.(D).

⁵ ID.

mix of uses within close proximity to provide the goods, services and recreational opportunities needed by residents within walking distance of their homes. Zoning schemes promote pedestrian activity by addressing the types, locations and densities of uses, the proximity of these uses to each other and to public transportation and the layout of streetscapes in a manner that facilitates pedestrian activity and reduces vehicle travel speeds. The City's UNO, TND, VMU and TOD ordinances provide examples of the manner in which zoning schemes can encourage pedestrian-oriented development.

Due to its location immediately adjacent to The University of Texas at Austin campus, the UNO district establishes development regulations that require and promote pedestrian-oriented design and uses within close proximity to student housing and public transit. For example, the ordinance specifies "local uses," those that provide needed goods and services in a manner readily accessible by pedestrians, such as convenience stores, day care services, food sales, medical offices, pet services, and religious assembly⁶. The ordinance then allows for the location of these uses in otherwise residential structures, so long as a specified portion of the local use is located at street level⁷. To further facilitate pedestrian activity, the ordinance establishes no minimum front yard, street side yard, rear yard or interior side yard setbacks and even establishes maximum front yard and street side yard setbacks of 10 feet⁸. These minimal setbacks, combined with the requirement that all sidewalks have a width of at least 12 feet and other street tree and lighting requirements, completes the regulatory framework⁹.

⁶ ID. at § 25-2-753.

⁷ ID. at § 25-2-754(D).

⁸ ID. at § 25-2-757.

⁹ ID. at § 25-2-760.

Pedestrian-oriented design is at the core of the traditional neighborhood district provided for in the TND ordinance. Neighborhoods developed pursuant to this ordinance are relatively small in size (40 to 250 acres) and designed for pedestrian, bicycle and public transportation use above vehicular use¹⁰. The focal point of these neighborhood developments is a town square, located within the "Neighborhood Center Area," which contains the retail, commercial, civic and public services needed to serve the area residents¹¹. Permitted uses within the town square include retail shops, restaurants, offices, banks, hotels, post offices, churches, community centers and some residences¹². Surrounding the town square is the "Mixed Residential Area," wherein various types of low-density residential uses are located¹³. Unlike the UNO, VMU and TOD ordinances, the TND ordinance promotes pedestrian activity without increasing density or requiring mixed-use sites. Rather, the TND ordinance seeks to replicate the low-density neighborhoods of the early twentieth century with a focus on street design and the location of particular uses in proximity to residences¹⁴.

All properties located within a VMU overlay district, the owners of which have opted to develop pursuant to the ordinance, must meet pedestrian-oriented design requirements intended to increase pedestrian activity within the streetscapes fronted by multi-level, mixed-use buildings¹⁵. Though there is great flexibility in the allocation of uses among each level of these buildings, all are required to provide "pedestrian-oriented commercial space" along at least 75 percent of the building frontage along

¹⁰ ID. at §§ 25-3-2(B)(1), (6), 25-3-3(A).

¹¹ ID. at § 25-3-3(B), (C).

¹² ID. at § 25-3-3(C).

¹³ ID. at § 25-3-3(D).

¹⁴ ID. at §§ 25-3-2, 3, 29

¹⁵ ID. at § 25-2, Subchapter E., § 4.3.3.(C).

principal streets¹⁶. This variety of commercial space is defined in dimension, design and use¹⁷. For example, the space must be at least twenty-four feet deep, provide pedestrian access to the streetscape and meet minimum glazing requirements to ensure a store-front type design¹⁸. Among the permissible uses within these commercial spaces are convenience store, food sales, restaurant and retail sales¹⁹. By meeting these requirements and the affordability requirements discussed above, developers are able to obtain additional building coverage, FAR, and reduced parking for their VMU projects²⁰.

As stated above, the TOD zoning district was established to provide for pedestrian-oriented development surrounding public transit stations²¹. A typical TOD contains three distinct zones (Gateway Zone, Midway Zone and Transition Zone) surrounding the transit station, which vary in use and intensity with distance from the station²². The Gateway Zone, located immediately surrounding the transit station, generally extending for a distance of 300 to 500 feet therefrom, has the highest density and is designed to facilitate pedestrian use of the transit station and surrounding properties²³. Though each TOD is uniquely designed by the developer, in collaboration with City staff and the Capital Metropolitan Transportation Authority, all are to include streetscapes that connect the transit station with surrounding buildings that contain ground floor pedestrian-oriented uses²⁴.

¹⁶ ID.

¹⁷ ID.

¹⁸ ID.

¹⁹ ID.

²⁰ ID. at § 4.3.3.(F).

²¹ ID. at § 25-2-147.

²² ID. at § 25-2-766.03.

²³ ID.

²⁴ ID.

4.7.4. HIGH-DENSITY/MIXED-USE

As mentioned in the previous subsection, an integral part of most pedestrian oriented design is the high-density mix of uses that provides needed goods, services, recreational opportunities and civic components within close proximity to residential units and workplaces. Zoning schemes promote high-density, mixed-use development within appropriate areas by providing development bonuses and decreased parking space requirements for projects that contain specific uses and/or specified mixes of uses. The City's UNO, VMU and TOD ordinances provide examples of the manner in which zoning schemes can encourage high-density, mixed-use development.

The UNO district was enacted to facilitate the redevelopment of properties containing older single-family residences and mid-rise, multi-family projects with the high-density, mixed-use projects needed to serve the rising University of Texas at Austin student population within walking distance to campus. To encourage this type of redevelopment, the ordinance provides development bonuses, reduced setbacks and reduced parking requirements²⁵. For example, residential and commercial uses are permitted on all properties within the overlay district, regardless of base zoning district, so long as at least 50 percent of the commercial uses are located on the ground floor and fall within the class of specified "local uses" that serve the student population²⁶. In return for providing the requisite mix of uses within a project, the maximum height limitation is increased up to 175 feet within some areas of the overlay district and building setback requirements are greatly reduced²⁷. Another important component of high-density, mixed-use development is the treatment of

²⁵ ID. at §§ 25-2-756, 25-6-601

²⁶ ID. at §§ 25-2-753(A), 754.

²⁷ ID. at § 25-2-756.



parking. For projects developed under this ordinance, minimum parking requirements are reduced by 40 to 60 percent from what would otherwise be required¹. However, the parking that is required, if serving a commercial use, must be in the form of structured parking, as surface lot parking is prohibited².

Though the affordable housing requirements and specifications regarding ground floor uses imposed by the VMU overlay district ordinance can limit flexibility and increase the cost of a project, the development bonuses and reduced parking requirements that are provided generally make development of medium to high density, mixed-use projects pursuant to the ordinance commercially viable. The basic requirements of the ordinance are that a building have multiple floors, the use on the ground floor be different from a use on an upper floor and that a "pedestrian-oriented commercial use," as discussed above, be located on the ground floor of the building, facing the street³. A multi-level, mixed-use building constructed pursuant to this ordinance may not exceed the maximum height limitation provided in the applicable base zoning district regulations, but there is no maximum limitation on building coverage or FAR and the project receives a 40 percent reduction in the number of parking spaces that must be provided⁴.

In furtherance of the stated objective of providing pedestrian-oriented development surrounding public transit stations, the TOD ordinance requires that all projects contain a medium to high density, mixed-use component, generally to be located within the Gateway Zone, which links the transit station to the surrounding, less

dense, primarily residential sites⁵. Though the requirements of the TOD ordinance may be changed or waived during the site-specific planning process, the ordinance does specify uses which are not appropriate for a TOD and allows for the location of residential uses on the upper floors of a multi-level commercial building⁶. As is common with other City ordinances providing for high-density, mixed-use development, the TOD ordinance provides a 40 percent reduction in the number of parking spaces required for each site⁷.

4.7.5. ACCOMMODATION OF PERSONS WITH DISABILITIES

While the Americans with Disabilities Act of 1990 ("ADA"), as amended, establishes the minimum requirements for the accommodation of persons with disabilities in existing and new construction, many municipalities elect to promote additional accommodations through the provision of development bonuses to projects that exceed ADA requirements. The City's PUD ordinance and UNO overlay district ordinance, respectively, are examples of a general and a specific approach to this issue. The PUD ordinance requires that a project be deemed "superior" to that which may be entitled under conventional zoning and subdivision regulations⁸. One of the many enumerated characteristics that a project may have in support of its "superiority" is accommodation of persons with disabilities in a manner that exceeds the requirements of the ADA⁹. The ordinance provides further guidance on how a project might best exceed ADA requirements. Alternatively, the UNO district ordi-

⁵ *Id.* at §§ 25-2-147, 766.02.

⁶ *Id.* at § 25-2-766.12.

⁷ *Id.* at § 25-26-611(A).

⁸ *Id.* at § 25-2, Subchapter B, Division 5, Subpart A, § 1.1.

⁹ *Id.* at § 25-2, Subchapter B, Division 5, Subpart A, § 2.4.

nance provides specific requirements for all multi-family residential projects¹⁰. For example, all ground floor units must be adaptable for use by the disabled and accessible from on-site parking by the disabled¹¹. Additionally, a minimum of 10 percent of the total number of residential units within a building must be accessible for a person with a mobility impairment and at least two percent must be accessible for a person with a hearing or visual disability¹². Lastly, each multi-level building must be served by an elevator unless at least 25 percent of the residential units contained therein are located on the ground floor¹³.

4.7.6. FORM-BASED ZONING

Traditional zoning, also known as "Euclidean zoning" for the 1926 United State Supreme Court opinion in *Village of Euclid v. Ambler Realty Co.* upholding this form of zoning, entails the division of land within a municipality into zones within which a particular land use is permitted and to which particular height, density, parking, transportation and other regulations apply¹⁴. The Supreme Court upheld Euclidean zoning based on its finding that the segregation of different land uses and the regulation of the intensity thereof increases the safety of the public¹⁵. Following this ruling, Euclidean zoning spread across the country and currently the vast majority of American municipalities, including the City of Austin, regulate land use in this manner.

Beginning in the early 1960s and continuing to present day, many urban planners criticize Euclidean zoning, claiming that

¹⁰ *Id.* at § 25-2-754(C).

¹¹ *Id.* at § 25-2-754(C)(2).

¹² *Id.* at § 25-2-754(C)(3), (4).

¹³ *Id.* at § 25-2-754(C)(5).

¹⁴ *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

¹⁵ *Id.* at 394-395.

the segregation of land uses into districts creates isolated, unnatural urban spaces, increases urban sprawl and greatly hinders innovative economies of scale in housing, transportation, agriculture, energy, and public health¹⁶. In response to these criticisms, urban planners have sought to replicate the economic, social and civic vitality that pre-Euclidean zoned municipalities in a movement known as "New Urbanism." Out of the New Urbanist movement has grown "form-based zoning," a land use regulatory framework wherein the emphasis on land use is secondary to the goal of creating a physical form that creates a desired type of place. A great description of this type of zoning regulation is offered by urban planner Paul Crawford, a member of the Form Based Code Institute, stating that form-based zoning is:

"...Municipal development regulations that go beyond the conventional zoning controls of segregating land and regulating land use types and defining building envelopes by setback requirements and height limits. Form-based codes instead address the details of relationships between buildings and the public realm of the street, the form and mass of buildings in relation to one another, and the scale and type of streets and blocks. Form-based codes are based on specific urban design outcomes desired by the community that may be identified through an inclusive, design-focused public participation process. The regulations in form-based codes are applied to property through "regulating plans" that map the community with geographic destinations that are based on the scale, character, intensity, and form of development rather than the differences in land uses¹⁷."

¹⁶ JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 7 (1961); see, Patricia E. Salkin, *Zoning and Land Use Planning, Implementation of the APA Growing Smart Legislative Guidebook: Beginning to Benchmark Success*, 33 REAL EST. L. J. 339 (2004).

¹⁷ Robert J. Sitkowski and Brian W. Ohm, *Form-Based Land Development Regulations*, 38 URB. LAW. 163, 164 (2006) (quoting an email to the authors from Paul Crawford).

Numerous municipalities, primarily in California and Florida, have adopted form-based zoning ordinances¹⁸. Additionally, many private developers have used form-based zoning principles to design New Urbanist projects throughout the country. The "SmartCode," developed by renowned urban planner, Andres Duany, serves as a model code for municipalities and developers desiring to tailor these principles to particular city or project. A copy of the SmartCode is provided in Appendix C of this final report. The most notable application of the SmartCode to a project in the central Texas area is the 2,300-acre Leander Transit Oriented Development, within initial transportation infrastructure anticipated to begin in 2009¹⁹.

¹⁸ *Id.* at 163 (listing Contra Costa County, California; Arlington County, Virginia; Petaluma, California; Hercules, California; Kendall, Florida; and Azusa, California).

¹⁹ E-mail from L. Michael O'Neal, Vice President, Hughes Capital Management, Inc., to Kevin M. Flahive, Associate Attorney, Clark, Thomas & Winters, P.C. (Dec. 5, 2008).



DEFINITIONS

NSA – Net Site Area includes only the portions of a site that lie in an uplands zone and have not been designated for wastewater irrigation.

Net Site Area is the aggregate of:

- (1) 100 percent of the land with a gradient of 15 percent or less;
- (2) 40 percent of the land with a gradient of more than 15 percent and not more than 25 percent; and
- (3) 20 percent of the land with a gradient of more than 25 percent and not more than 35 percent,

pursuant to Sec. 25-8-62 (*Net Site Area*) of the City of Austin Land Development Code.

GSA – Gross Site Area means the total site area, pursuant to Sec 25-1-21 (*Definitions*) of the City of Austin Land Development Code.

GA – Gross Area is undefined in the Brackenridge Agreement, but presumably means an impervious cover percentage based upon the entirety of the tract.

GFA – Gross Floor Area means the total enclosed area of all floors in a building with a clear height of more than six feet, measured to the outside surface of the exterior walls. The term includes loading docks and excludes atria airspace, parking facilities, driveways, and enclosed loading berths and off-street maneuvering areas, pursuant to Sec 25-1-21 (*Definitions*) of the City of Austin Land Development Code.

LDC – City of Austin Land Development Code.

FAR – Floor Area Ratio means the ratio of Gross Floor Area to Gross Site Area, pursu-

ant to Sec 25-1-21 (*Definitions*) of the City of Austin Land Development Code.

UPA – Units Per Acre

LA Water Supply Sub. Watershed – Lake Austin Water Supply Suburban Watershed as described in Sec. 25-8-421 – 25-8-425 (*Water Supply Suburban Watershed Requirements*).

Mean Sea Level – The average height of the surface of the sea for all stages of the tide; used as a reference for elevations.

Shoreline – The 492.8 topographic contour line along the shores of Lake Austin, as described in Sec. 25-2-55153 (*Lake Austin District Regulations*) of the City of Austin Land Development Code.

