



City of El Paso – City Plan Commission Staff Report

Case No: SUAX15-00002 John Hayes Annexation
Application Type: Annexation (Agreement Only)
CPC Hearing Date: June 4, 2015
Staff Planner: Jeff Howell, (915) 212-1607, howelljb@elpasotexas.gov

Location: East of John Hayes and North of Edgemere
Legal Description: Portion of Augusta Lane, out of Hill Crest Estates, El Paso County, Texas
Acreage: 0.8545 acres
Rep District: ETJ (Adjacent to District 5)
Existing Use: Roadway
Existing Zoning: N/A
Proposed Zoning: N/A

Property Owner: El Paso County
Applicant: El Paso County
Representative: Conde, Inc.

Distance to Park: Loma Del Este #1 (0.18 miles)
Distance to School: James P. Butler Elementary (0.65 miles)

SURROUNDING ZONING AND LAND USE

North: ETJ (Extraterritorial Jurisdiction) / Vacant
South: C-2 (Commercial) / Vacant
East: ETJ (Extraterritorial Jurisdiction) / Single-family homes
West: R-5 (Residential) / Single-family homes

PLAN EL PASO DESIGNATION: O6, Potential Annexation

NEIGHBORHOOD ASSOCIATIONS: Eastside Civic Association

General Information:

The applicant is requesting to annex land located within the City of El Paso's Extraterritorial Jurisdiction (ETJ). The subject property is approximately 0.8545 acres in size. The annexation is being requested to accommodate roadway existing improvements to John Hayes Street, which approved as were part of the Lomas Del Este subdivision, as well as the East Zaragoza Land Study. A subdivision application will follow soon after the annexation is complete.

Staff Recommendation:

The Development Coordinating Committee (DCC) recommends **approval** of this Annexation Agreement.

(Annexation Agreement – See Attachment 5)

The recommendation is based on the following:

Plan El Paso O6 – Potential Annexation: Potentially developable land that is not needed for urban expansion at this time but is available if expansion is needed. Land can be re-designated from O6 to a growth sector through a formal amendment to the Future Land Use Map.

Additionally, the subject property abuts the city limits and the annexation will provide continuity of John Hayes Street within the city limits.

Findings:

The Commission must determine the following:

1. Will the annexation protect the best interest, health, safety and welfare of the public in general?
2. What is the relation of the proposed change to the city’s Comprehensive Plan?
3. What effect will the annexation have upon the natural environment social and economic conditions and property values in the vicinity and in the City as a whole?

Planning & Inspections Department - Planning Division:

Approval. This annexation of John Hayes Street will complete a major arterial on the city’s Major Thoroughfare Plan.

El Paso Police Department:

No comments received.

Planning & Inspections Department – Land Development:

No comments received.

Parks and Recreation Department:

No comments received.

EPWU-PSB:

According to the El Paso Water Utilities – Public Service Board (EPWU-PSB) Records, the subject Property is located immediately north and east of the City Limits.

EPWU – PSB Records, the subject Property is located immediately north and east of the “Eastside Annexation 2005-07” Area.

Water

Water storage improvements to the existing system are required to enable service to the subject property.

Along John Hayes Street between Edgemere Boulevard and Loma Dante Drive there is an existing sixteen (16) inch diameter water transmission main. This main is located at approximately 35 feet west of the easternmost Right-of-Way line of John Hayes Street. No direct service connections are allowed from the described 16-inch diameter water transmission main as per the El Paso Water Utilities - Public Service Board Rules & Regulations.

There is an existing eight (8) inch diameter water main stub-out aligned towards the east along the proposed Davidson Boulevard. This stub-out originates from the above-described 16-inch diameter water transmission main.

Sanitary Sewer

Along John Hayes Street between Edgemere Boulevard and Loma Dante Drive there is an existing fifteen (15) inch diameter sanitary sewer main. This main is located at approximately 23 feet west of the John Hayes Street center line. This main is available for service.

There is an existing eight (8) inch diameter sanitary sewer main stub-out aligned towards the east along the proposed Davidson Boulevard. This stub-out originates from the above-described 15-inch diameter sanitary sewer main.

General

EPWU requires a new service application to initialize design of the water and sanitary sewer main extensions to serve the subject property. New service applications are available at 1154 Hawkins, 3rd Floor. The following items are required at the time of application: (1) hard copy of subdivision plat; (2) finalized set of street improvement plans, including storm sewer; (3) digital copy of subdivision plat; (4) benchmark check; and (5) construction schedule. Service will be provided in accordance with the current EPWU – PSB Rules and Regulations. The owner is responsible for the costs of any necessary on-site and off-site extensions, relocations or adjustments of water and sanitary sewer lines and appurtenances.

EPWU – Stormwater Division:

We have reviewed the subdivision described above and we have no objections.

Sun Metro:

Sun Metro does not oppose this request. Recommends the construction of sidewalks for pedestrian access.

TxDOT:

Roadway not under TxDOT jurisdiction.

County of El Paso:

No comments received.

Attachments:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Proposed Cross-Section
5. Annexation Agreement
6. Application

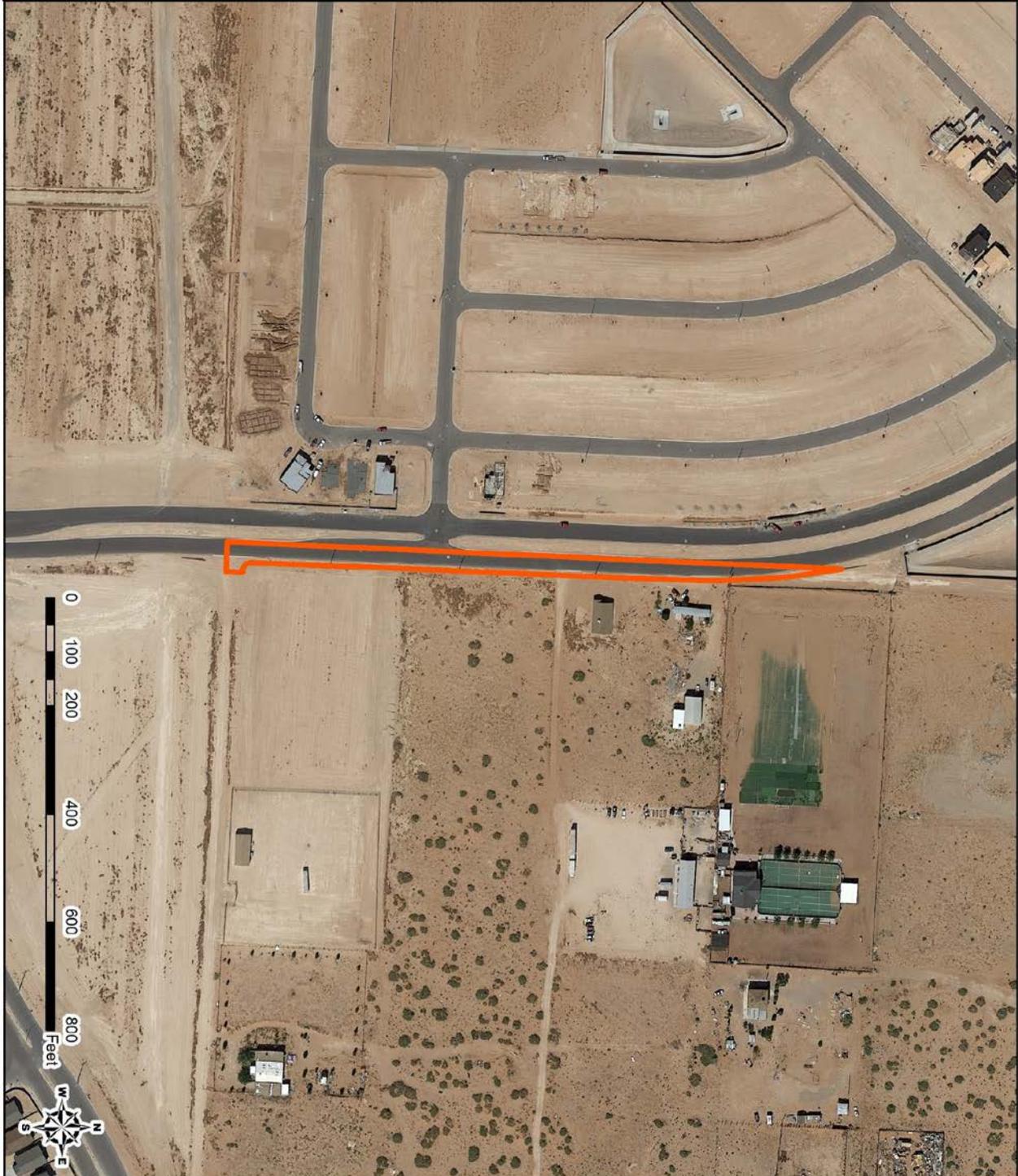
ATTACHMENT 1

JOHN HAYES ANNEXATION



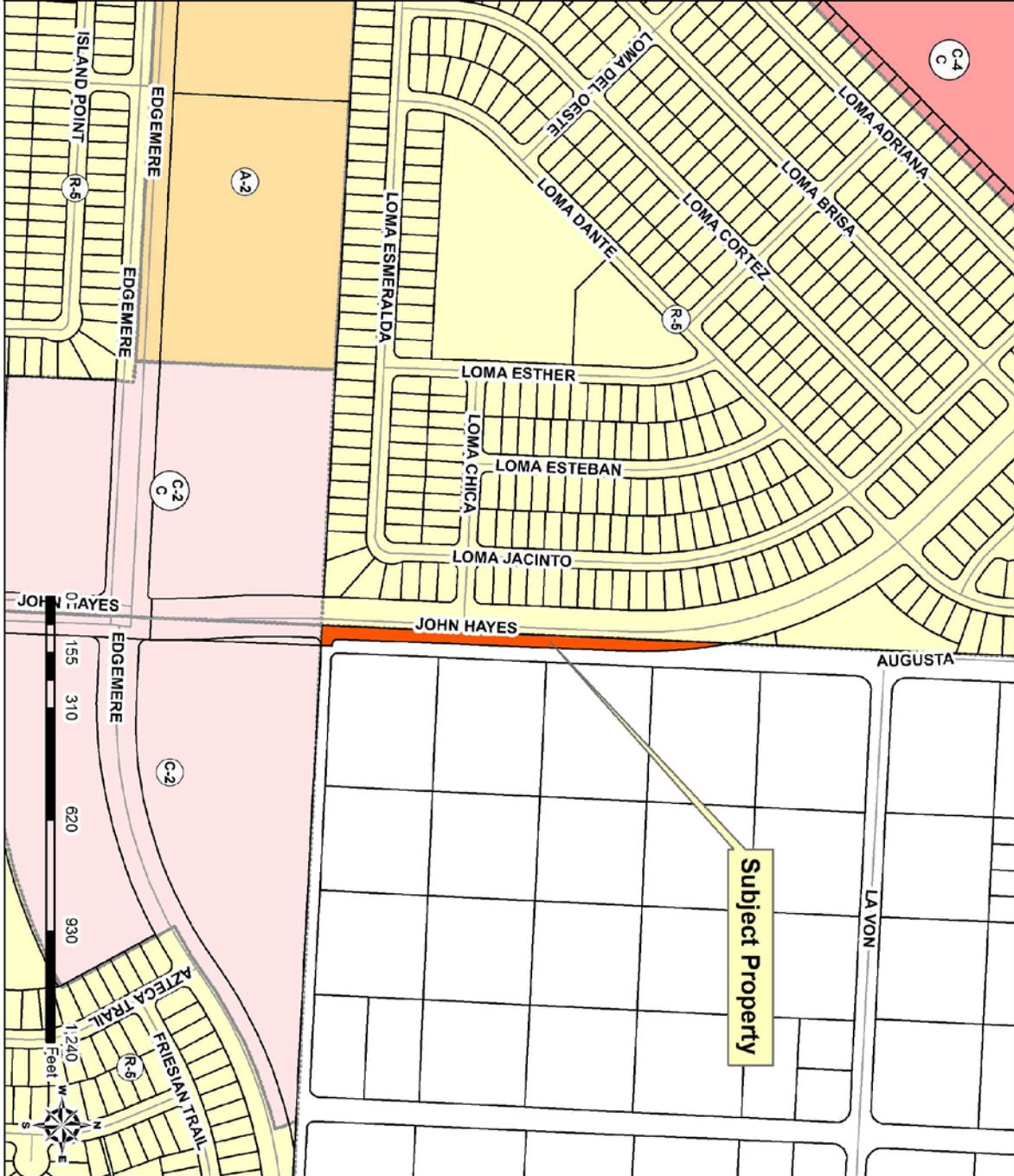
ATTACHMENT 2

JOHN HAYES ANNEXATION

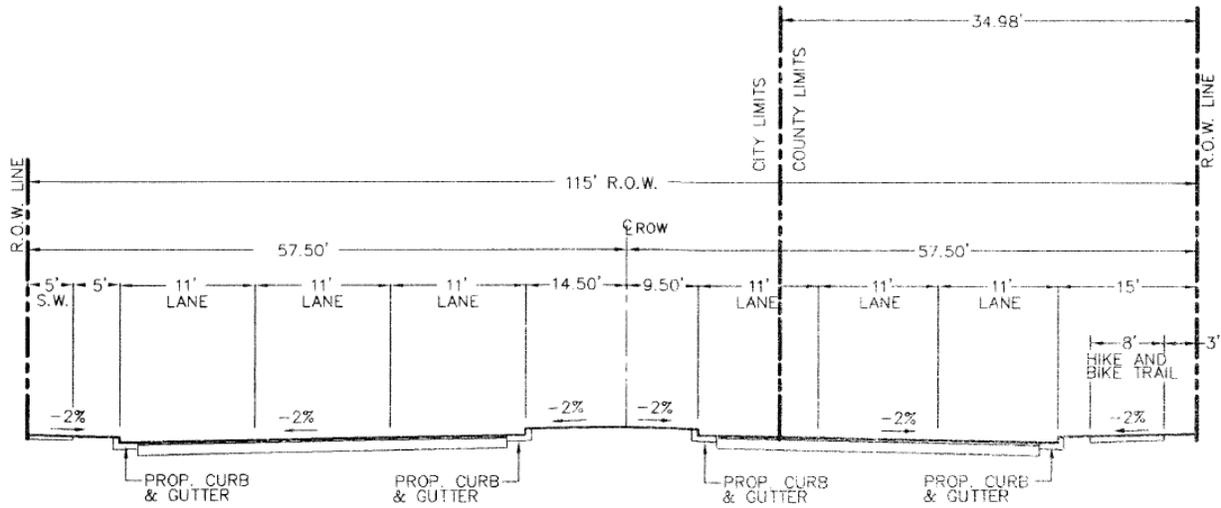


ATTACHMENT 3

JOHN HAYES ANNEXATION



ATTACHMENT 4



115' R.O.W. JOHN HAYES DRIVE TYPICAL SECTION
N.T.S.
(MAJOR ARTERIAL STREET)

fees in effect on the Effective Date of this Agreement except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Developer that the requirements specified below and specified in Section Three of this Agreement are in addition to the requirements specified in the City of El Paso City Code, City ordinances, City rules and regulations, and the Rules and Regulations of the El Paso Water Utilities/Public Service Board, and Owner agrees to comply with the additional requirements. Developer agrees to develop the Property in accordance with the following additional conditions:

1. No off premise signs shall exist on the Property at the time of annexation.
2. Property is to be used for right-of-way purposes only (John Hayes Street and Augusta Lane).
3. The area will be dedicated as right-of-way to provide the required Major Arterial roadway.
4. The Developer shall improve the dedicated right-of-way to current standards in Title 19 and the City's Design Standards for Construction (DSC) to complete John Hayes Street as a Major Arterial and Developer shall not request or be eligible for over width pavement reimbursement.

Three: Developer hereby agrees that within 90 days of the passage of the ordinance annexing Property, Developer shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code in effect at the time this Annexation Agreement is approved by City Council.

Four: Owner understands and agrees that Owner will be responsible for paying any other fees required by the Public Service Board's Rules and Regulations as well as payment of water and wastewater annexation fees to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that the Developer connects to the public water system as follows and associated wastewater service connection:

Based on gallons per minute water flow; EPWU-PSB Rules & Regulations No.1, Sec.7(J)

The water and wastewater annexation fee shall be increased by three (3) percent on **March 1, 2016** and each year thereafter, compounded annually.

Payment of the water and wastewater annexation fee shall be due at the time of application for service. New/additional water and/or wastewater connections shall pay the appropriate annexation fees. Existing water and wastewater connections are not subject to these fees. The annexation fee set forth herein shall not be increased in relation to the Property nor shall the Owner be responsible for payment of impact fees or other new fees, regardless how named, which may serve purposes identical to or similar to the Annexation Fee.

Five: Developer hereby agrees to pay all annexation recording fees and public hearing published notice fees.

Notice: Any formal notice or other communication ("Notice") required to be given by one party to the other under this Agreement shall be given in writing, addressed to the Party to be notified at the address set forth below, by (i) delivering the same in person, (ii) depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid,

(iii) depositing the same with Federal Express or with another nationally recognized courier service guaranteeing "next day delivery," or (iv) sending the same by telefax with confirming copy sent by certified or registered mail. For the purpose of notice, the addresses of the Parties, until changed as provided below, shall be as follows:

- (1) CITY: City of El Paso
Attn: City Manager
300 N. Campbell
El Paso, Texas 79901

Copy to: City Clerk
Same Address as above

- (2) El Paso Water Utilities-Public Service Board
Attn: President/CEO
1154 Hawkins Boulevard
El Paso, TX 79925

- (3) OWNER: County of El Paso
500 E. San Antonio
El Paso, TX 79901

- (4) DEVELOPER: Ranchos Real Land Holdings, LLC
6080 Surety Dr., Ste. 300
El Paso, TX 79905

COPY TO: Conrad Conde
Conde, Inc.
6080 Surety Dr., Ste. 100
El Paso, TX 79905

The Parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by giving at least five (5) days written notice to the other Party. If any date or any period provided in this agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday, or legal holiday.

Successors and Assigns: This Agreement is a restriction, condition and covenant running with the Property and a charge and servitude thereon, and shall be binding upon and inure to the benefit of the parties hereto, and their heirs, successors and assigns of all or any part of the Property. Any future conveyance of the Property shall contain the restrictions, conditions and covenants and shall embody this Agreement by express reference; provided, however, this Agreement shall not be binding on, and shall not create any encumbrance to title as to, any end-buyer of a fully developed and improved lot within the Property, except for land-use regulations that may apply to a specific lot.

Remedies: This Agreement shall be enforceable in any court of competent jurisdiction by any of the parties or by an appropriate action at law or in equity to secure the performance of the restrictions, conditions and covenants herein contained. In the event a Party (the "Defaulting Party") commits a breach of this Agreement, the other Party (the "Non-Defaulting Party"), shall, prior to bringing suit or pursuing any other remedy, provide written notice of such breach to the Defaulting Party. Following receipt of such notice, the Defaulting Party shall have thirty (30) days within which to cure the breach. If the breach cannot be cured within such thirty- (30-) day period, the Defaulting Party shall commence to cure such breach within said period and thereafter diligently continue such cure to completion. In the event the Defaulting Party fails to cure the breach within said period, then the Non-Defaulting Party may pursue any remedy provided at law or in equity.

Force Majeure: In the event that any Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such Party's giving of notice and the full particulars of such force majeure in writing to the other Party as soon as possible after the occurrence of the cause relied upon, then the obligations of the Party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. The term "force majeure" as used herein, shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, war, terrorism, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, explosions, breakage or damage to machines or pipelines and any other incapacities of either Party, whether similar to those enumerated or otherwise, and not within the reasonable control of the Party claiming such inability.

Severability: If any provision of this Agreement is held invalid by a court of competent jurisdiction, such provision shall be deemed to be excised herefrom, and the invalidity thereof shall not affect any of the other provisions contained herein, provided that any invalid provisions are not deemed by the City or the Owner to be material to the overall purpose and operation of this Agreement. If the City or Owner determines that the invalid provision is material, then, if the City has made such determination, the City shall have the option to disannex the Property. If the Owner has made such determination, the Owner shall have the option to terminate this Agreement. Such judgment or decree shall relieve the City and the Owner from performance under such invalid provision of this Agreement.

Entire Agreement: This Agreement contains the entire agreement of the Parties, and there are no other agreements or promises, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be amended only by written agreement signed by the Parties.

Governing Law, Jurisdiction & Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, as it applies to contracts performed within the State of Texas and without regard to any choice of law rules or principles to the contrary. The Parties acknowledge that this Agreement is performable in El Paso County, Texas and hereby submit to the jurisdiction of the courts of that County, and hereby agree that any such Court shall be a proper forum for the determination of any dispute arising hereunder.

No Third-Party Beneficiary: This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person or entity who is not a Party, unless expressly otherwise provided.

Waiver: Any failure by a Party hereto to insist upon strict performance by the other Party of any material provision of this Agreement shall not be deemed a waiver thereof or of any provision hereof, and such Party shall have the right at any time thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

Reservation of Rights: to the extent not inconsistent with this Agreement, each Party reserves all rights, privileges, and immunities under applicable laws.

Further Documents: Each Party agrees that at any time after execution of this Agreement, it will upon request of the other Party, execute and deliver such further documents and do such further acts and things as the other Party may reasonably request in order to effect the terms of this Agreement.

Incorporation of Exhibits and Other Documents by Reference: All exhibits and other documents attached to or referred to in this Agreement are incorporated herein by reference for the purposes set forth in this Agreement.

Effect of State and Federal Laws: Notwithstanding any other provisions of this Agreement, each Party in carrying out the terms of this Agreement shall comply with all applicable State and Federal laws.

Headings: The headings as to contents of particular articles or sections herein are inserted only for convenience, and they are in no way to be construed as a limitation on the scope of the particular articles or sections to which they refer.

Ambiguities: In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any Party on the basis that such Party did or did not author the same.

Counterparts: It is understood and agreed that this Agreement may be executed in any number of counterparts, each which shall be deemed an original for all purposes.

Authority for Execution: Each Party hereby certifies, represents, and warrants that the execution of this Agreement has been duly authorized.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and have caused this instrument to be executed by their duly authorized officials and the corporate seal affixed hereto, all on the day and year first above written.

APPROVED on this _____ day of _____, 2015.

THE CITY OF EL PASO

Tomás González
City Manager

APPROVED AS TO FORM:

Karla M. Nieman
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy, Director
Planning & Inspections Department

APPROVED AS TO FORM:

General Counsel

**EL PASO WATER UTILITIES
PUBLIC SERVICE BOARD**

John Balliew, President/CEO

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2015, by,
Tomás González, as City Manager of the City of El Paso, Texas

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____, 2015, by,
John Balliew, as President/CEO of the El Paso Water Utilities-Public Service Board.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

(ACCEPTANCE ON FOLLOWING PAGE)

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

Owner(s): County of El Paso

By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____, as _____ of County of El Paso.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

ACCEPTANCE

The above Agreement, with all conditions thereof, is hereby accepted this _____ day of _____, 2015.

Developer: Ranchos Real Land Holdings, LLC

By: _____

Title: _____

ACKNOWLEDGEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the _____ day of _____, 2015, by _____, as _____ of Ranchos Real Land Holdings, LLC.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

Exhibit A
Metes and Bounds Description

Prepared For: Southwest Land Development Services
April 16, 2015
(John Hayes Annexation Parcel 1)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Augusta Lane out of Hill Crest Estates as recorded in volume 10, Page 14, Plat records of El Paso County, Texas, and being more particularly described by metes and bounds as follows:

The "TRUE POINT OF BEGINNING" being a nail set for the common corner of Sections 35, 36, 37 & 38, Block 79, Township 2, Texas and Pacific Railway Company Surveys, from which an existing city monument at the centerline intersection of John Hayes Street and Edgemere Blvd. bears South 00°35'06" East a distance of 556.09 feet;

Thence along the westerly right of way line of Augusta Ln., North 00°32'01" West a distance of 1134.83 feet to a set ½" rebar with cap marked TX 5152 from which a found rebar with smashed cap bears South 88°03'12" West a distance of 0.52 feet;

Thence leaving said right of way line, 285.30 feet along the arc to the right which has a radius of 1157.50 feet a central angle of 14°07'21" a chord which bears South 07°35'41" East a distance of 284.58 feet to a set ½" rebar with cap marked TX 51152 on the easterly right of way line of Augusta Ln. out of Hill Crest Estates;

Thence along said right of way line, South 00°32'01" East a distance of 797.91 feet to a set ½" rebar with cap marked TX 5152 for a point of curve;

Thence 31.43 feet along the arc of a curve to the left which has a radius of 20.00 feet a central angle of 90°02'21" a chord which bears South 45°33'11" East a distance of 28.29 feet to a found ½" rebar with cap marked TX 5152 on the northerly right of way line of Davidson Blvd. out of Hill Crest Estates;

Thence, South 00°48'57" East a distance of 35.00 feet to a found ½" rebar with cap marked TX 5152 on the southerly line of Hill Crest Estates;

Thence along said line, South 89°59'59" West a distance of 55.17 feet to the "TRUE POINT OF BEGINNING" and containing 37,220 Square Feet or 0.8545 acres of land more or less.

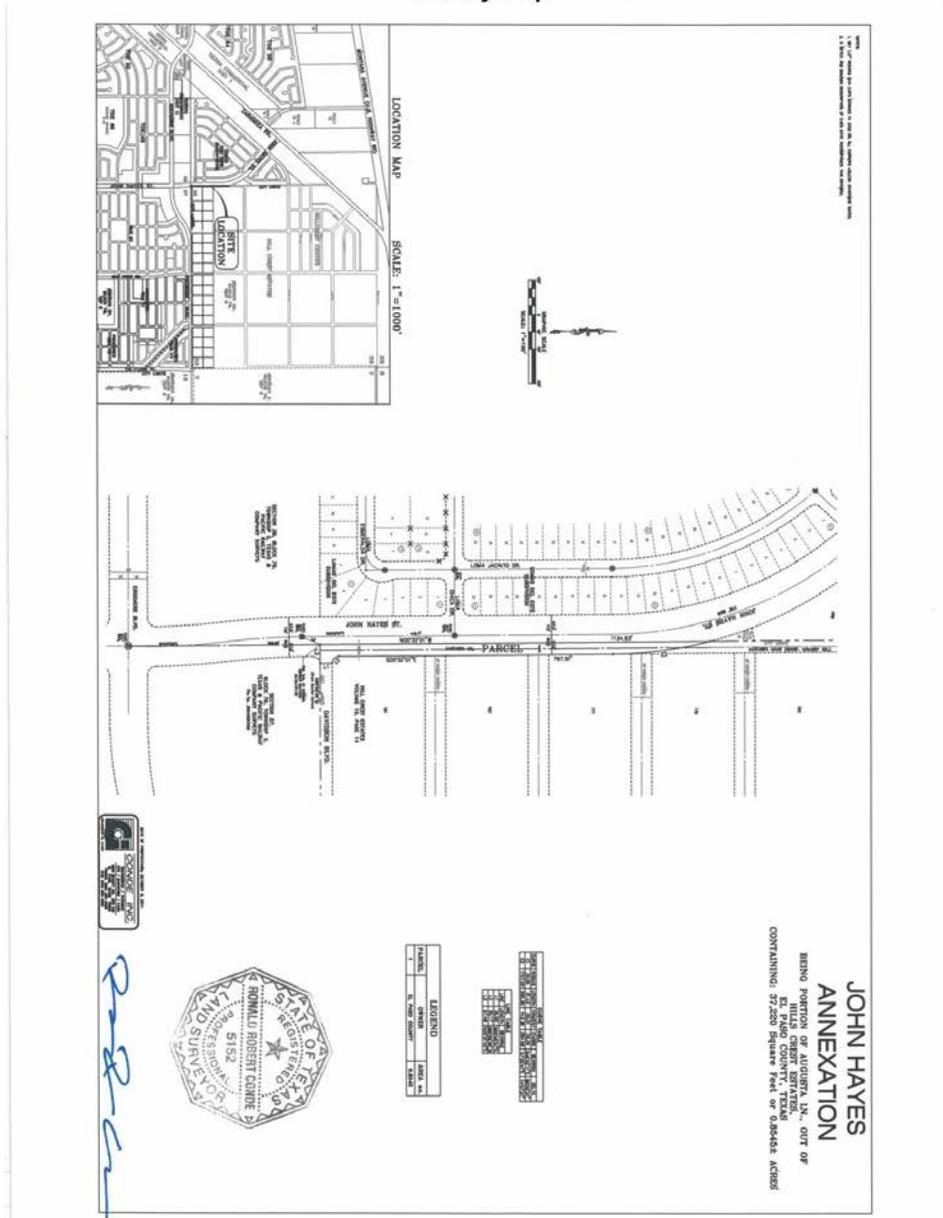
Note: a drawing of even date accompanies this description.


Ron R. Conde
R.P.L.S. No 5152



CONDE INC
ENGINEERING / LAND SURVEYING / PLANNING
6080 SURETY DRIVE / SUITE 100 / EL PASO, TEXAS 79905
(915) 592-0283 FAX (915) 592-0286

Exhibit B Survey Map



394270 / 15-1007-1387 / SUAX15-00002 John Hayes Annexation Agreement
 KMN

SUAX15-00002

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ATTACHMENT 6



**APPLICATION FOR ANNEXATION
PLANNING & ECONOMIC DEVELOPMENT
PLANNING DIVISION**



1. CONTACT INFORMATION

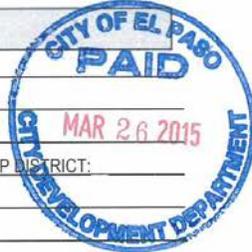
PROPERTY OWNER(S): El Paso County
 ADDRESS: 500 E. San Antonio ZIP CODE: 79901 PHONE: 546-2000
 APPLICANT(S): El Paso County
 ADDRESS: 500 E. San Antonio ZIP CODE: 79901 PHONE: 546-2000
 REPRESENTATIVE(S): Conde, Inc.
 ADDRESS: 6080 Surety Drive, Ste 100 ZIP CODE: 79905 PHONE: 592-0283
 E-MAIL ADDRESS: cconde@condeinc.com

2. PARCEL ONE INFORMATION

PROPERTY IDENTIFICATION NUMBER: n/a
 LEGAL DESCRIPTION: Being Portion of Augusta Ln., Hills Crest Estates, El Paso County, Texas
 STREET ADDRESS OR LOCATION: John Hayes Street REP DISTRICT: 5
 ACREAGE: 0.8545 ac. PRESENT ZONING: n/a PRESENT LAND USE: Street Right-Of-Way
 PROPOSED ZONING n/a PROPOSED LAND USE: Street Right-Of-Way-To allow for consistent annexation that abuts the existing Tierra Del Este Master Planned area that was previously annexed

3. PARCEL TWO INFORMATION

PROPERTY IDENTIFICATION NUMBER: _____
 LEGAL DESCRIPTION: _____
 STREET ADDRESS OR LOCATION: _____ REP DISTRICT: _____
 ACREAGE: _____ PRESENT ZONING: _____ PRESENT LAND USE: _____
 PROPOSED ZONING _____ PROPOSED LAND USE: _____



4. PARCEL THREE INFORMATION

PROPERTY IDENTIFICATION NUMBER: _____
 LEGAL DESCRIPTION: _____
 STREET ADDRESS OR LOCATION: _____ REP DISTRICT: _____
 ACREAGE: _____ PRESENT ZONING: _____ PRESENT LAND USE: _____
 PROPOSED ZONING _____ PROPOSED LAND USE: _____

5. ADDITIONAL INFORMATION

OWNER (S) OF RECORD FOR THE ABOVE DESCRIBED PARCEL(S):
 Printed Name: County of El Paso Signature: _____
 Printed Name: Veronica Escobar, County Judge Signature: [Signature]
 Printed Name: _____ Signature: _____

Note: Signatures are required for all owners of record for the property proposed for rezoning. Attach additional signatures on a separate sheet of paper.

**** OFFICE USE ONLY ****

AN SUAX15-00002 RECEIVED DATE: 3/26/15 APPLICATION FEE: \$ 6609.91
 DCC REVIEW DATE: / / : 1ST Public Hearing : / / (Location/time to be announced)
 CPC REVIEW DATE: / / (1:30 pm, City Council Chambers, 2nd Floor, City Hall Building)
 ACCEPTED BY: Valein Herrera

2015.0034