



**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Planning and Economic Development

AGENDA DATE: CCA Consent: 9/14/2010

CONTACT PERSON/PHONE: Ernesto Arriola – (915) 541-4723

DISTRICT(S) AFFECTED: Districts 5 and 6

SUBJECT:

A Resolution authorizing the City Manager to sign an Annexation Agreement between the City and County of El Paso, for 1.4405 acres of real property located Southeast of Zaragoza Road and South of the Intersection of Rich Beem Avenue and Volcanic Rock Avenue which will specify the terms and conditions in which the property will be annexed should the City annex the property. That the Deputy Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Local Government Code. (East ETJ, Adjacent to Districts 5 and 6)

BACKGROUND / DISCUSSION:

See attached report.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) – Unanimous Approval
City Plan Commission (CPC) – Unanimous Approval

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) N/A

FINANCE: (if required) N/A

DEPARTMENT HEAD:

Mathew S. McElroy
Deputy Director – Planning

DATE: _____

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

RESOLUTION

WHEREAS, the City and County of El Paso wish to annex approximately 1.4405 acres of real property described in Exhibit “A” and Exhibit “B” which is attached and incorporated for all purposes, and of which the County of El Paso is the owner of approximately of 1.4405 acres of such real property; and,

WHEREAS, the Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City and the Property Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and,

WHEREAS, the City has determined that if the Property is annexed, such annexation should be subject to terms and conditions which will require the Property Owner to assist in bearing the costs for municipal infrastructure and costs for providing municipal services to the annexed area; and,

WHEREAS, Property Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign an Annexation Agreement between the City and County of El Paso, for 1.4405 acres of real property located Southeast of Zaragoza Road and South of the Intersection of Rich Beem Avenue and Volcanic Rock Avenue which will specify the terms and conditions in which the property will be annexed should the City annex the property.

That the Deputy Director of Planning prepare an annexation service plan in accordance with Section 43.056 of the Local Government Code.

ADOPTED this _____ day of _____, 2010.

THE CITY OF EL PASO

John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Lupe Cuellar,
Assistant City Attorney

APPROVED AS TO CONTENT:

Mathew S. McElroy, Deputy Director
Deputy Director – Planning
Development Services Department

Exhibit A

Being a Portion of Section 46,
Block 79, Township 2, Texas and
Pacific Railway Company Surveys,
City Of El Paso, El Paso County, Texas
September 18, 2009
(Parcel 1)

METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a Portion of Section 46, Block 79, Township 2, Texas and Pacific Railway Company Surveys, City Of El Paso, El Paso County, Texas, and being more particularly described by metes and bounds as follows:

Commencing for reference at a found 2" pipe for the common corner of Sections 46 and 47, Block 79, Township 2 and sections 2 and 3, Block 79, Township 3, Texas and Pacific Railway Company Surveys, from which a found 2" pipe for the common corner of Sections 45, 46, 3 and 4 bears South 89°59'06" West a distance of 5312.40; Thence with the line between section 46 and 47, North 00°34'37" West a distance of 2616.36 feet to a point for the "TRUE POINT OF BEGINNING"

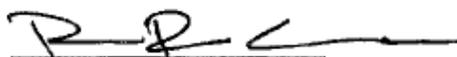
Thence leaving said line South 90°00'00" West a distance of 60.00 feet to a point on the westerly right of way line of Caravanola Ave.;

Thence North 00°34'37" West a distance of 1045.79 feet to a point;

~~Thence, North 89°58'35" East a distance of 60.00 feet to a point on the easterly right of way line of Caravanola Ave;~~

Thence along said right of way line South 00°34'37" East a distance of 1045.79 feet to "TRUE POINT OF BEGINNING" and containing 1.4405 acres of land more or less.

Not a ground survey, Bearing basis is per plat of Tierra Del Este Unit Fifty Six recorded in clerks file no. 20080074768, Real property records of El Paso County, Texas.

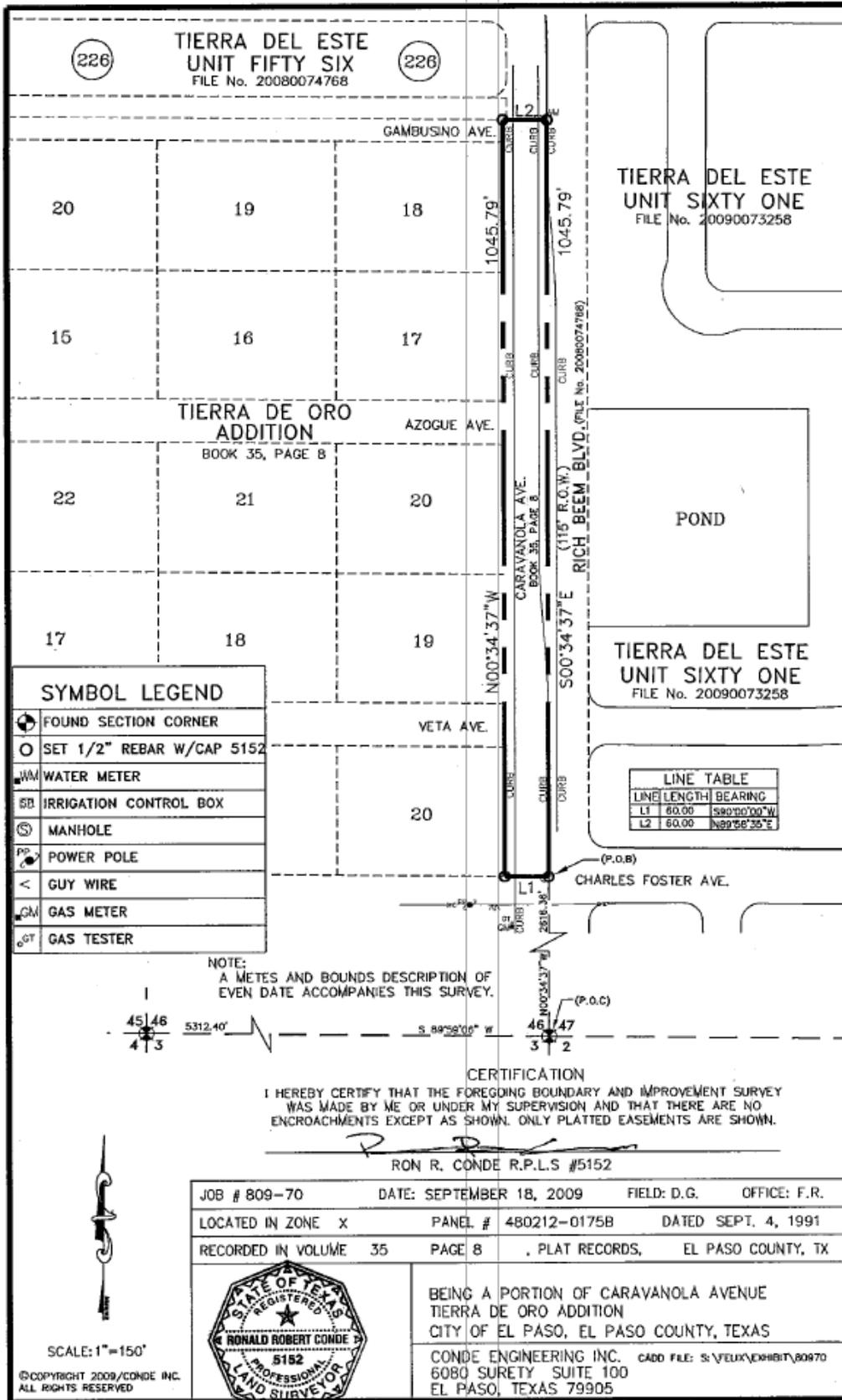

Ron R. Conde
R.P.L.S. No. 5152



job #809-70

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

Exhibit B



THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

ANNEXATION AGREEMENT
AN10-001

THIS AGREEMENT made and entered into this ____ day of _____ 2010, by and between the City of El Paso, Texas, a Municipal Corporation, of the County of El Paso in the State of Texas (hereinafter referred to as "City"), and the County of El Paso (hereinafter referred to as "Owner");

WHEREAS, Owner is the owner-of-record of 1.4405 acres of real property described in Exhibit "A" and Exhibit "B" that is attached to this annexation agreement (which real property is hereinafter referred to as "Property"), and which Property is not within the corporate limits of any municipality but is contiguous to the corporate limits of the City; and,

WHEREAS, Owner desires that the Property be annexed to the City in order to provide adequate and efficient improvements and facilities; and

WHEREAS, Owner, after full consideration, accepts the terms and conditions cited in this Agreement due to the advantages and benefits resulting from the annexation of the Property; and,

WHEREAS, the City, after due and careful consideration, has concluded that should the City decide to annex the Property the annexation should be under the terms and conditions hereinafter set forth and that such terms and conditions are in the best interest of the City to protect and provide for the public health, safety, morals and general welfare.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

One: Should the City annex the Property such annexation will be in accordance with the terms and conditions of this Agreement. This Agreement shall be an exhibit to the ordinance which annexes the property and shall be incorporated for all purposes. It is understood by the Owner that there are significant costs to the City associated with the annexation of Property into the City and of paramount consideration for the City in entering into this Agreement is that the Owner participate in the municipal infrastructure costs and costs for providing municipal services as required in this Agreement.

Two: Owner hereby agrees that the development of the Property shall be in accordance with the rules and regulations of the City, including Public Service Board Regulations, and subject to the application and payment of all necessary application and permit fees except as otherwise provided below and Section Three and Section Four of this Agreement. It is understood by the Owner that the requirements specified below and specified in Section Three and Section Four 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. Owner agrees to develop the Property in accordance with the following additional conditions:

1. No off premise signs shall be permitted on the property.

2. Property is to be used for Right of way purposes only (extension and improvements to Rich Beam).

Three: Owner hereby agrees that within 90 days of the passage of the ordinance annexing Property, Owner shall apply for a subdivision plat in accordance with the procedures of Title 19 (Subdivisions) of the Code.

Four: In addition to any other fees required by the Public Service Board Regulations, Owner agrees to pay a water and wastewater annexation fee to the El Paso Water Utilities-Public Service Board for each three-quarter inch (3/4") equivalent water meter that is connected to the public water system as follows:

EASTSIDE ANNEXATION FEES – 2005

To be updated (increase 3%) every March 1, starting March 1, 2006
Year 2010

<u>Meter Size</u>	<u>Water</u> (Dollars)	<u>Wastewater</u> (Dollars)
Less than 1"	656.00	380.00
1"	1,618.00	938.00
1 1/2"	3,281.00	1,901.00
2"	5,249.00	3,042.00
3"	10,498.00	6,084.00
4"	16,404.00	9,506.00
6"	32,807.00	19,012.00
8"	61,241.00	35,489.00
10"	87,487.00	50,699.00

The water and wastewater annexation fee shall be increased by three (3) percent on March 1, 2011, and each year thereafter, compounded annually. Payment of the water and wastewater annexation fee shall be due at the time of application for water and wastewater connection to the system. Existing water and wastewater connections are not subject to these fees.

Five: Owner shall provide the City with one (1) mylar and three (3) paper prints of a current aerial map of the Property depicting the condition of the Property at the time of annexation to the City. Such aerial, and any other evidence necessary to demonstrate the existence of any non-conforming lot, use or structure on the Property at the time of annexation, shall be provided by the Owner within thirty (30) days from passage of the ordinance annexing Property to the City.

The aerial and other evidence shall be submitted to the Zoning Administrator in the Development Services Department of the City for validation of such non-conforming lot, use, or structure within the Property.

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
2 Civic Center Plaza
El Paso, Texas 79901

Copy to: City Clerk
Same Address as above

OWNER: County of El Paso
500 E. San Antonio
El Paso, TX 79901

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, lightening, 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 even 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 authorize 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.

THE CITY OF EL PASO

Joyce Wilson
City Manager

APPROVED AS TO FORM:

Lupe Cuellar
Assistant City Attorney

APPROVED AS TO CONTENT:

Patricia D. Adauto, Deputy City Manager
Development & Infrastructure Services

ACKNOWLEDGMENT AND ACCEPTANCE ON FOLLOWING PAGE

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____ 2010,
by Joyce Wilson, as City Manager of the City of El Paso, Texas

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 _____, 2010.

Owner(s): County of El Paso
By: _____

Title: _____
County of El Paso

ACKNOWLEDGEMENT

STATE OF TEXAS)
COUNTY OF EL PASO)

This instrument was acknowledged before me on the ____ day of _____ 2010,
by _____, as _____ of County of El Paso.

Notary Public, State of Texas

Notary's Printed or Typed Name

My Commission Expires:

Exhibit A
Metes and Bounds Description

Being a Portion of Section 46,
Block 79, Township 2, Texas and
Pacific Railway Company Surveys,
City Of El Paso, El Paso County, Texas
September 18, 2009
(Parcel 1)

METES AND BOUNDS DESCRIPTION

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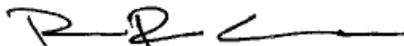
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Thence along said right of way line South 00°34'37" East a distance of 1045.79 feet to "TRUE POINT OF BEGINNING" and containing 1.4405 acres of land more or less.

Not a ground survey, Bearing basis is per plat of Tierra Del Este Unit Fifty Six recorded in clerks file no. 20080074768, Real property records of El Paso County, Texas.



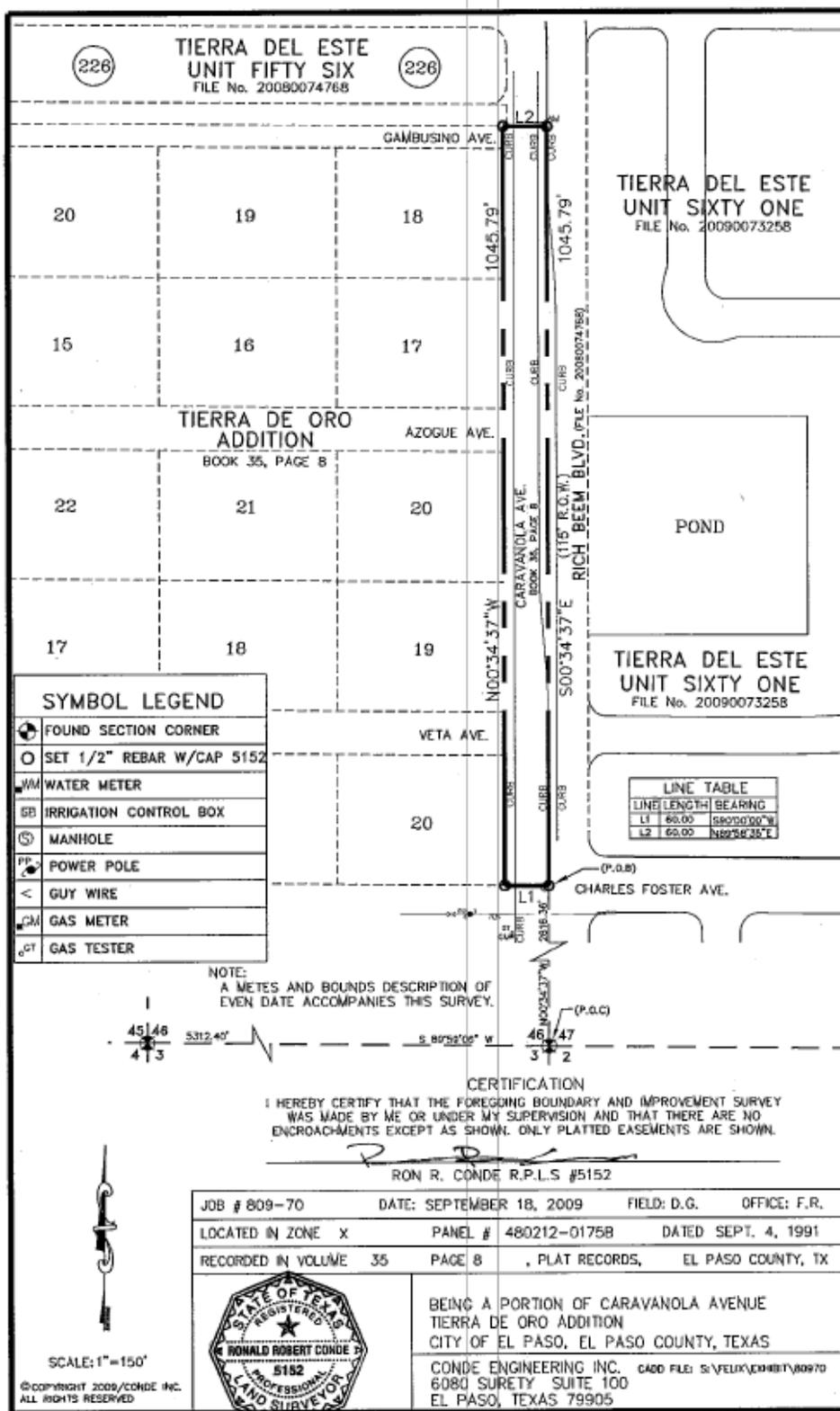
Ron R. Conde
R.P.L.S. No. 5152



Job #809-70

CONDE, INC.
ENGINEERING / LAND SURVEYING / PLANNING
1790 LEE TREVINO SUITE 400 / EL PASO, TEXAS 79936 / (915) 592-0283

Exhibit B Survey Map



Dedicated to Outstanding Customer Service for a Better Community

S E R V I C E S O L U T I O N S S U C C E S S

PLANNING AND ECONOMIC DEVELOPMENT



MEMORANDUM

DATE: August 31, 2010
TO: The Honorable Mayor and City Council
Joyce A. Wilson, City Manager
FROM: Ernesto Arriola, Planner
SUBJECT: Rich Beem Extension Annexation

The City Plan Commission (CPC) on May 20, 2010 **recommended approval of the annexation agreement.**

The CPC determined that the annexation agreement protects the best interest, health, safety and welfare of the public in general; and will have no effect on the natural environment, social economic conditions, and property values in the vicinity and the city as a whole.

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susie Byrd

District 3
Emma Acosta

District 4
Carl L. Robinson

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

Attachments: Staff Report

Planning and Economic Development
Victor Q. Torres – Director

2 Civic Center Plaza – 5th Floor · El Paso, Texas 79901 · (915) 541-4622 · Fax (915) 541-4725



City of El Paso – City Plan Commission Staff Report

Case No AN10-001
Application Type Annexation (Agreement Only)
DCC Date March 10, 2010 (Agreement Review)
CPC Hearing Date May 20, 2010
Staff Planner Ernesto Arriola, 541-4723, arriolaea@elpasotexas.gov

Location Southeast of Zaragoza Road and South of the Intersection of Rich Beem Avenue and Volcanic Rock Avenue.

Legal Description A portion of Section 46, Block 79, Township 2, Texas and Pacific Railroad Surveys, El Paso County, Texas

Acreage 1.4405 acres

Rep District Adjacent to Representative District 5

Existing Use Vacant

Existing Zoning East ETJ

Proposed Zoning None

Property Owner County of El Paso

Applicant Ranchos Real IV, LTD

Representative Conde, Inc.

Distance to Park: 1,412 feet (Tierra Del Este 50B Park)

Distance to School: 6,052 feet (Sunridge Middle School)

SURROUNDING ZONING AND LAND USE

North: R-5 (Residential), Vacant

South: R-5 (Residential), Vacant

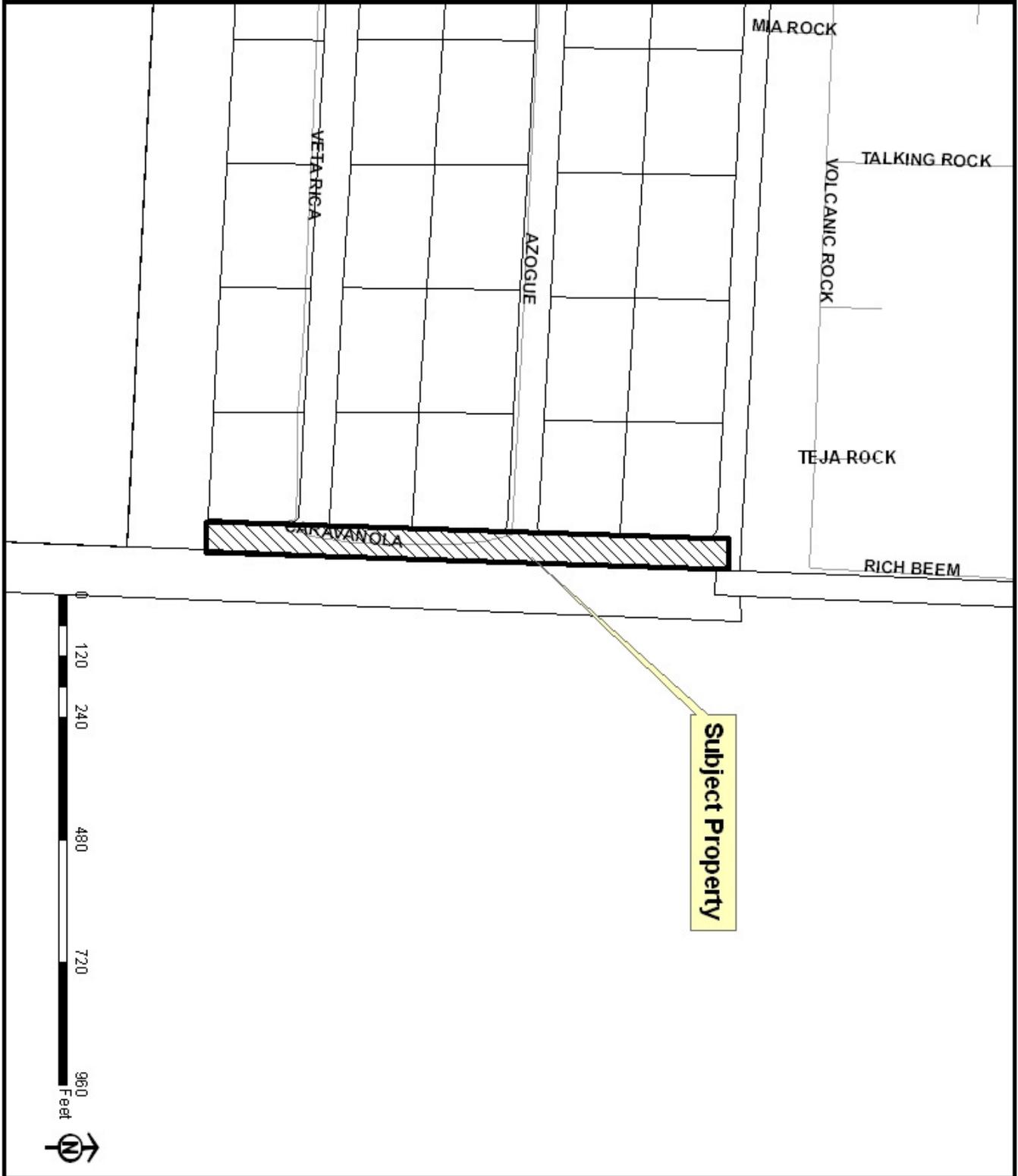
East: R-5 (Residential), Vacant

West: East ETJ, Vacant

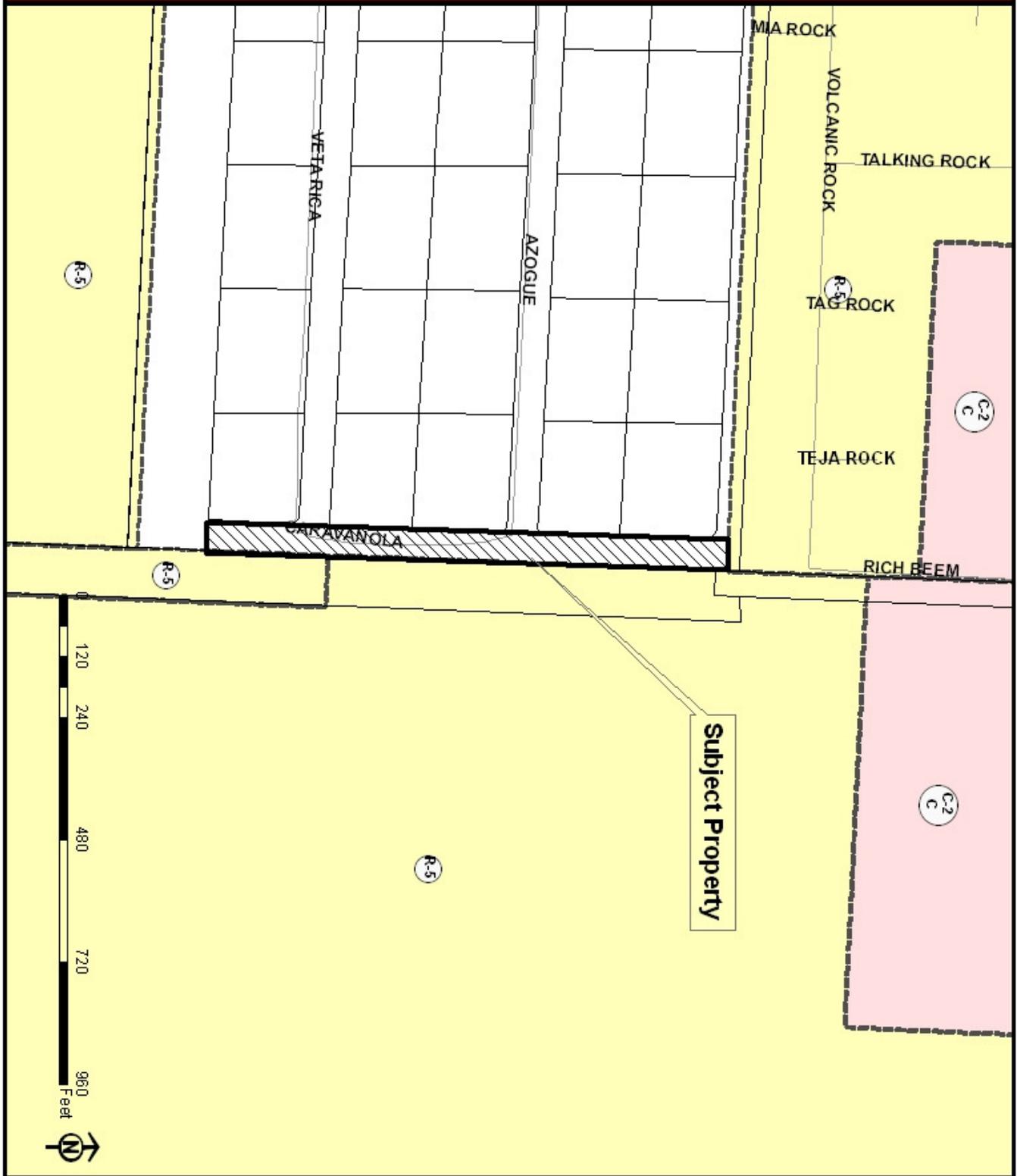
THE PLAN FOR EL PASO DESIGNATION: None

NEIGHBORHOOD ASSOCIATIONS: None

AN10001



AN10001



General Information:

The applicant is requesting an annexation of County Right of way currently known as Caravanola Avenue. The subject property is 1.44 acres in size and is currently vacant/Right of way. The subject property will be zoned R-5 (Residential) at the time of annexation.

Staff Recommendation:

The Development Coordinating Committee (DCC) recommends **approval** of this annexation request along with the Annexation Agreement.

(Annexation Agreement – See Attacment 5)

The recommendation is based on the following:

The Plan for El Paso Citywide Land Use Goals recommends that El Paso “provide designated locations for commercial development that do not adversely affect the health, safety and welfare of the community and where essential infrastructure is available to serve the development.”

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?

Development Services Department - Building Permits and Inspections Division:

BP&I Plan Review has no objection or adverse comments to the proposed annexation of the portion of Caravanola Ave. as outlined in your handout dated February 22, 2010.

Development Services Department - Planning Division:

Current Planning:

No objection to annexation request. The Service Plan and Annexation Agreement shall be approved with the ordinance approving the annexation in accordance with Texas Local Government Code 43.056. Planning does recommend approval of this request.

Land Development:

- No comments received.

Engineering Department - Traffic Division:

- No objection to annexation.
- The adjacent portion of Rich Beem is included in a previous annexation agreement, land study and in TDE 56. In line with previous agreements, request that applicant dedicate and improve the full width of Rich Beem to City standards for a major arterial roadway to provide access to subdivisions TDE 61 and 62.
- Recommendation that the annexation agreement state that this property is to be used for ROW purposes only (extension and improvements to Rich Beem).

Fire Department:

The El Paso Fire Department Strategic Planning Division has reviewed SUB10-00020, Rich Beem Annexation, and has no objections or adverse comments.

Parks:

No comments received.

El Paso Water Utilities:

EPWU does not object to this request.

Water

Water storage improvements to the existing system are required to enable service to the subject property. Water service to the subject property will be provided by a future elevated tank (reservoir) and an existing 24-inch water transmission main along Rich Beem Boulevard. This 24-inch main is located along the easternmost portion of Rich Beem Boulevard and extends between Gambusino Avenue and Charles Foster Avenue.

No direct service connections are allowed to the described 24-inch water main as per the El Paso Water Utilities – Public Service Board Rules and Regulations. Water service is anticipated to be provided by water distribution main extensions connecting to the proposed 24-inch transmission main.

Along Rich Beem Boulevard between Gambusino Avenue and Charles Foster Avenue there is an existing twelve (12) inch diameter water main located at approximately 30 feet west of the east right-of-way line of Rich Beem Boulevard.

Sanitary Sewer

Along Rich Beem Boulevard between Gambusino Avenue and Charles Foster Avenue there is an existing twelve (12) inch diameter sanitary sewer main located at approximately 76 feet west of the easternmost right-of-way line of Rich Beem Boulevard.

General

Annexation fees are due at the time of new service application for individual water meters within the subject property.

TxDOT:

No comments received.

County of El Paso:

No comments received.

Attachments:

Attachment 1: Location Map

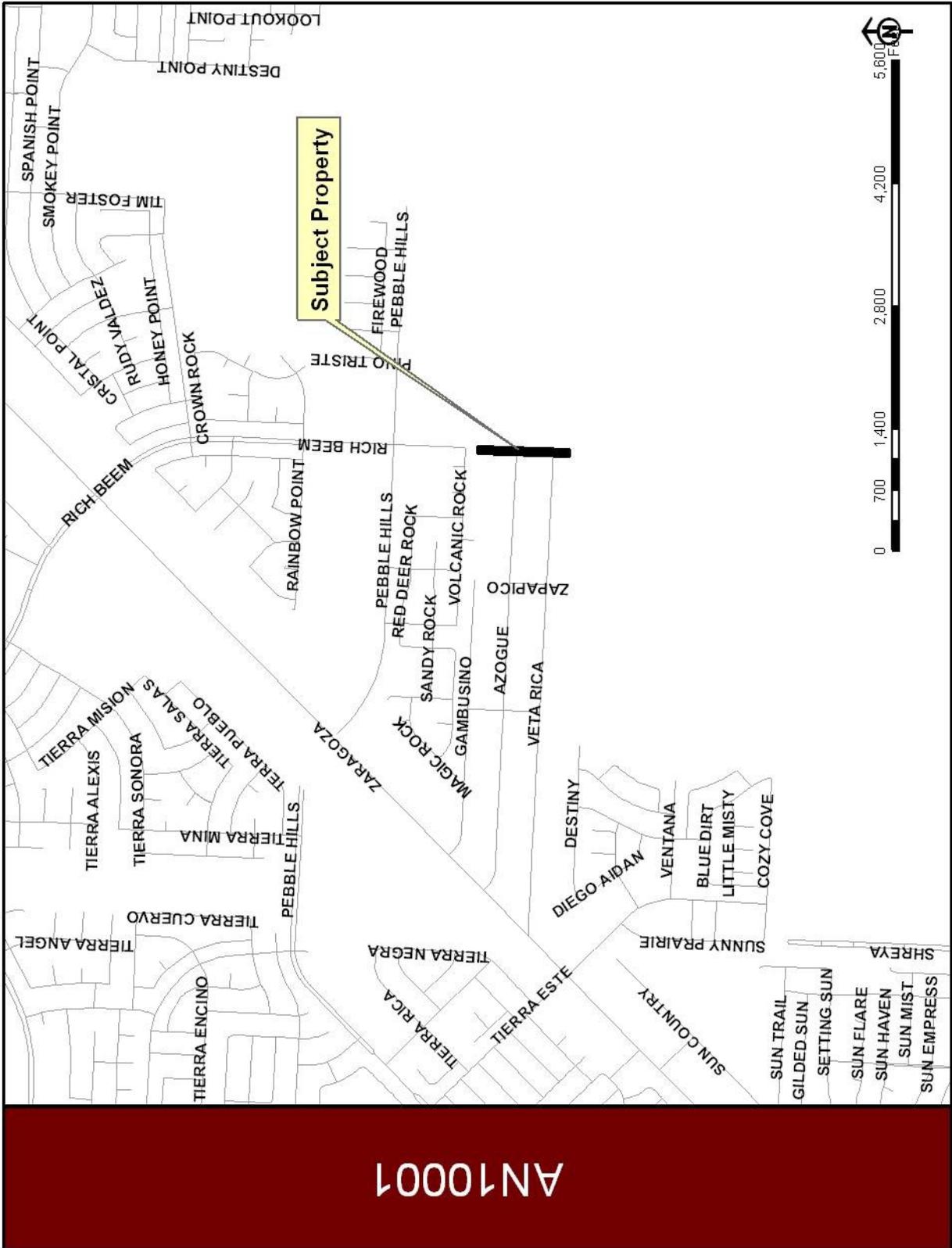
Attachment 2: Subject Property Map

Attachment 3: Aerial Map

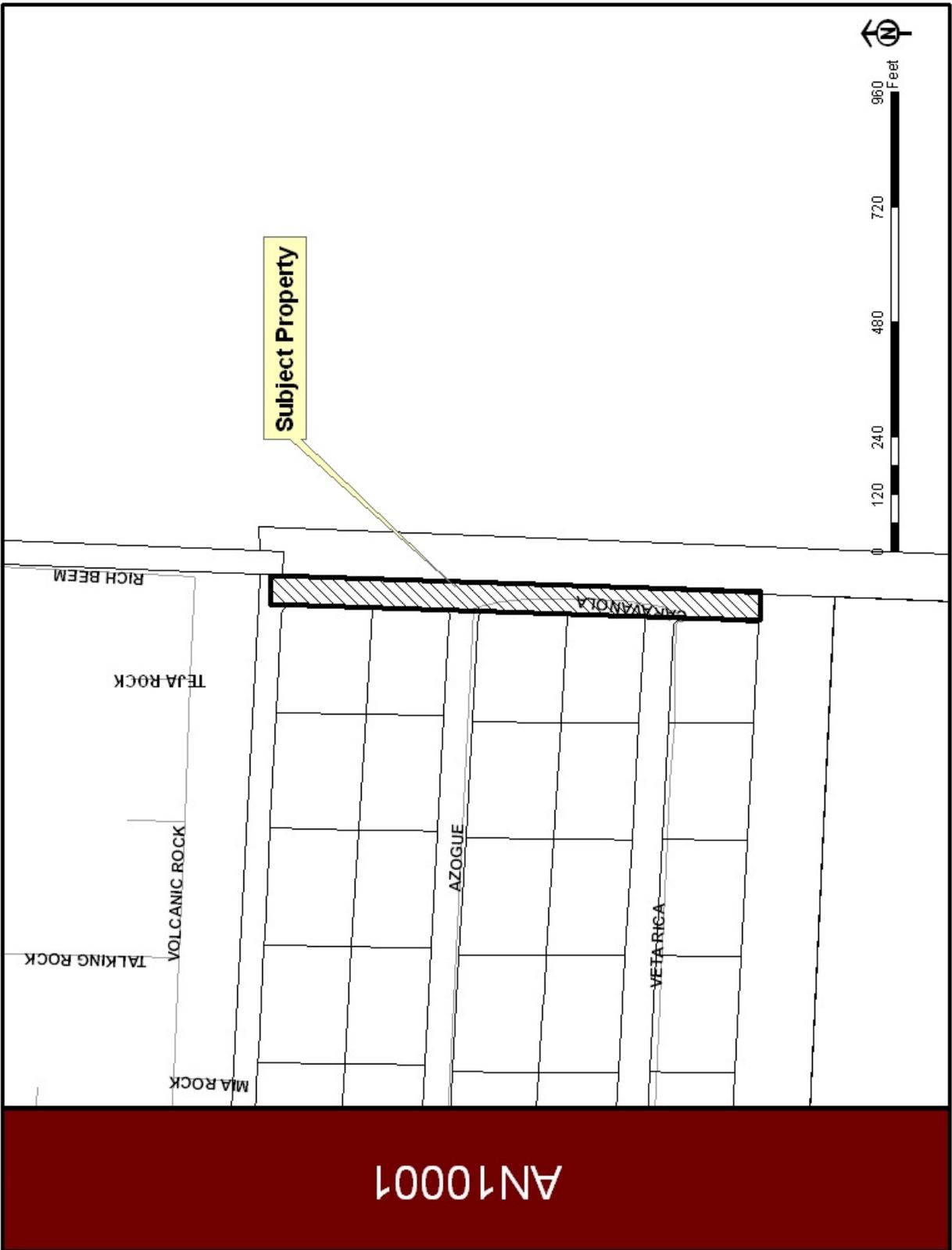
Attachment 4: Zoning

Attachment 5: Annexation Agreement

Attachment 1: Location Map



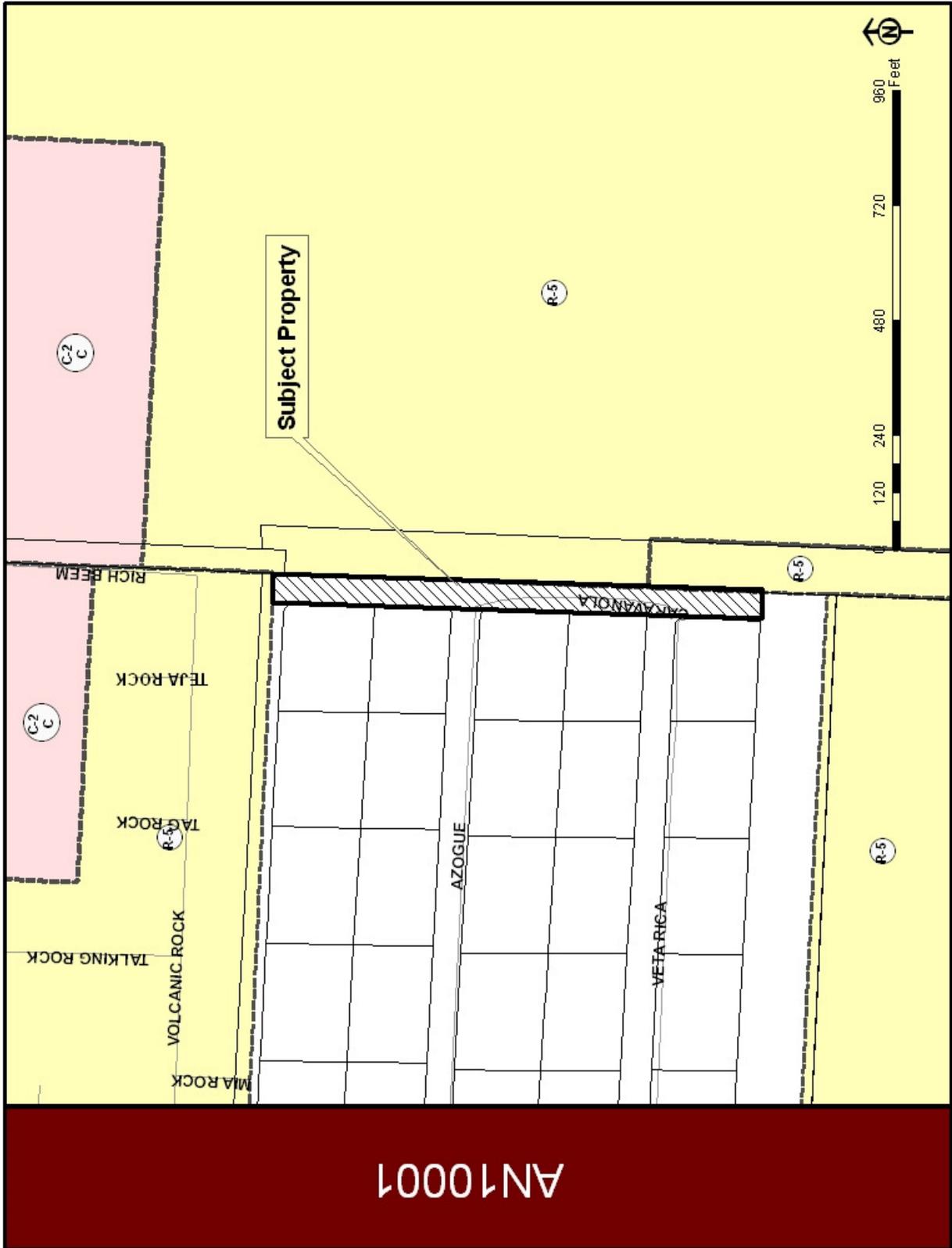
Attachment 2: Subject Property Map



Attachment 3: Aerial Map



Attachment 4: Zoning



AN10001

Attachment 5: Annexation Agreement