

Control Number: 50325



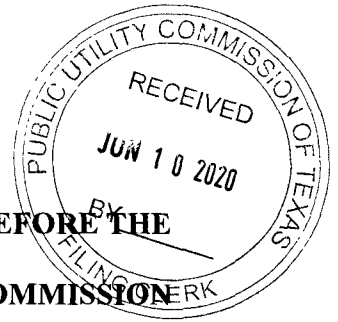
Item Number: 16

Addendum StartPage: 0

DOCKET NO. 50325

APPLICATION OF GRISTMILL §
UTILITY COMPANY, LLC TO §
OBTAIN A SEWER CERTIFICATE OF §
CONVENIENCE AND NECESSITY IN §
HAYS COUNTY §

PUBLIC UTILITY COMMISSION



OF TEXAS

RESPONSE TO ORDER NO. 4 AND REQUEST FOR EXTENSION

COMES NOW, Gristmill Utility Company, LLC (“Applicant” or “Gristmill”) and files this response to Order No. 4 and Request for Extension in the above-docketed case, and would respectfully show the following:

I. BACKGROUND

On December 6, 2019, Gristmill filed an application for a sewer Certificate of Convenience and Necessity (“CCN”) in Hays County. On January 10, 2020, the Staff of the Public Utility Commission of Texas (“Commission”) filed their Recommendation that the application be deemed administratively incomplete based on alleged mapping deficiencies. Order No. 2 found the application incomplete and established a deadline of February 10, 2020 to cure. On March 10, 2020, Commission Staff filed a supplemental Recommendation recommending that the application be found incomplete again for reasons of mapping deficiencies but identified a new ground, overlapping with County Line Special Utility District’s (“County Line SUD”) new CCN. Order No. 3 established April 9, 2020 as the deadline to cure. After coordination with agency mapping staff, Gristmill again provided additional mapping information on April 3, 2020 and Commission Staff again recommended that the application be found incomplete on May 11, 2020. This time, Commission Staff did not complain of an overlap with County Line SUD but with the City of Uhland. Order No. 4 was issued on May 26, 2020 requiring Gristmill to cure the noted deficiencies by June 10, 2020. Therefore this pleading is timely filed.

II. RESPONSE TO DEFICIENCIES

Commission Staff’s May 11, 2020 supplemental Recommendation complaining of an overlap with the City of Uhland (the “City”) and necessity of either removing it or obtaining the City’s consent is misplaced. The City has no CCN, provides no sewer service, and in fact, has requested service from Gristmill and its sister utility Plum Creek Utility, LLC through the creation

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of a public-private partnership between Gristmill, the City, and County Line SUD. Neither Commission rule nor any provision of the Texas Water Code requires Gristmill to obtain a municipality's consent, especially when the City does not have its own CCN or even a sewer system. On the contrary, Gristmill apprised Commission Staff that County Line SUD, the only utility authorized to provide service in Uhland, already consented to the overlap in the form of an August 2019 Sewer Service Agreement.¹

III. REQUEST FOR EXTENSION

Unfortunately, at no point in the review process did Commission Staff confer with Gristmill about the change in position regarding an arbitrary consent requirement from Uhland or how much time is necessary to obtain consent from a municipality that does not have a sewer system; therefore, Gristmill had insufficient time to cure any alleged deficiency. If the Administrative Law Judge ("ALJ") maintains that the City's consent must be obtained to declare the application administratively complete in addition to the consent already obtained from the only sewer utility authorized to provide retail service in the area (i.e., County Line SUD), then Gristmill will need additional time. Because of Texas Open Meeting Act constraints and the necessity to meet with both the City's Planning and Zoning Commission and City Council, the City's consent cannot be obtained quickly despite the aforementioned partnership, especially in light of the ongoing Covid-19 pandemic. Gristmill believes a more realistic deadline to cure the deficiencies noted by Commission Staff is in sixty (60) days or by August 10, 2020.


IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Gristmill respectfully prays that the ALJ find the application to be administratively complete or extend the deadline to supplement its application to cure deficiencies noted by Commission Staff until August 10, 2020, and all other such relief to which it is entitled.

¹ See **Exhibit A**, Sewer Service Agreement between Gristmill Utility Company, LLC and County Line SUD.

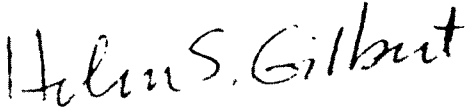
Respectfully submitted,

Randall B. Wilburn
State Bar No. 24033342
Helen Gilbert
State Bar No. 00786263
GILBERT WILBURN PLLC
7000 North MoPac Expwy., Suite 200
Austin, Texas 78731
Telephone: (512) 494-5341
Telecopier: (512) 472-4014

By: 
ATTORNEYS FOR GRISTMILL UTILITY
COMPANY, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have served or will serve a true and correct copy of the foregoing document via electronic mail on all parties on the 10th day of June 2020 in accordance with the Order Suspending Rules, issued in Project No. 50664.

By: 
Helen S. Gilbert

SEWER SERVICE AREA AGREEMENT

This Agreement between Gristmill Utility Company, LLC, a Texas limited liability company and retail public utility (hereinafter "GMU"), and County Line Special Utility District, a Texas special utility district and retail public utility operating under Chapter 65 of the Texas Water Code (hereinafter "CLSUD")(collectively, "Parties," and individually, "Party" depending upon the context)(this "Agreement") is entered into this 21 day of AUGUST, 2019 ("Effective Date"), with respect to the boundary lines agreed to for a proposed Certificate of Convenience and Necessity (hereinafter "CCN") and service area for the provision of sewer service for users pursuant to the Texas Water Code.

WHEREAS, CLSUD's boundaries include certain areas in and about Hays and Caldwell Counties, Texas, as more fully described in Exhibit A, although CLSUD does not currently hold a sewer CCN in these areas;

WHEREAS, GMU is the applicant for a sewer CCN at the Public Utility Commission of Texas for the provision of retail sewer service to certain areas in and about Hays County, Texas, as more fully described in Exhibit B, and CLSUD will be applying for a sewer CCN in areas in and about Hays and Caldwell Counties but not those described in Exhibit B;

WHEREAS, KB HOMES GRISTMILL HIGHLANDS, the owner of 50.98 acres of real property, as more fully described in Exhibit C attached hereto (the "GRISTMILL HIGHLANDS Property"), has requested that GMU provide retail sewer service to this property;

WHEREAS, Aus-Tex Parts and Services, the owner of 187.74 acres of real property, as more fully described in Exhibit D attached hereto (the "HARMONY HILLS Property"), has requested that GMU provide retail sewer service to this property; and

WHEREAS, the GRISTMILL HIGHLANDS Property and the HARMONY HILLS Property (cumulatively "GH & HH Properties") are currently located within the boundary and sewer service area of CLSUD; and

WHEREAS, GMU and CLSUD have agreed that GMU should provide retail sewer service to the GH & HH Properties and that such area encompassing the GH & HH Properties should be included in the GMU sewer CCN area.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which GMU and CLSUD hereby acknowledge, GMU and CLSUD agree as follows:

TERMS

1. The recitals set forth above are true and correct and incorporated herein for all purposes.

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2. The GRISTMILL HIGHLANDS Property is in development and the HARMONY HILLS Property is currently undeveloped.
3. Recognizing that sewer service pursuant to a sewer CCN is subject to the approval by the Public Utility Commission of Texas ("PUC") after public notice and hearing in accordance with PUC rules, **CLSUD agrees and consents to GMU providing retail sewer service to the GH & HH Properties and GMU's application for a sewer CCN for the geographical area covering these properties.** GMU agrees not to protest any of CLSUD's applications for sewer CCN and/or amendment of sewer CCN for areas other than the GH & HH Properties, which CLSUD may file in the future.
4. GMU shall be responsible for obtaining PUC approval of a CCN for the provision of retail sewer service for the GH & HH Properties.
5. GMU and CLSUD agree that no compensation shall be due and owing between GMU and CLSUD in conjunction with this sewer service area agreement.
6. GMU agrees that, upon approval of its CCN boundaries by PUC to include the GH & HH Properties within CLSUD's boundaries, CLSUD shall have no further obligation to provide retail sewer service to the GH & HH Properties, and that GMU shall be solely responsible for the provision of retail sewer service to those properties.
7. Prior to the approval by PUC of the CCN boundaries for GMU, **CLSUD consents for the limited purpose of GMU constructing sewer utility infrastructure necessary for the development of the GH & HH Properties.**

GENERAL PROVISIONS

8. Assignability. The terms of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and legal representatives. No Party may without the prior written consent of the other Party hereto, assign any rights, powers, duties, or obligations hereunder. This Agreement shall not inure to the benefit of any third party other than the Parties to this Agreement and their successors and permitted assignees or as otherwise provided herein.
9. Cooperation. The Parties hereto each agree to cooperate with each other, consistent with the terms and conditions of this Agreement. Additionally, each Party hereby agrees to take any and all other actions and to execute any and all other documents requested by the other Party necessary to effectuate the purposes of this Agreement. GMU shall bear the costs of pursuing the sewer application, which is described in this Agreement, at the PUC and, if protested, at the State Office of Administrative Hearings. If CLSUD anticipates incurring any expense to support GMU's effort to secure PUC approval, CLSUD shall notify GMU prior

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to incurring any expense. If GMU desires CLSUD's assistance that requires CLSUD to incur any expense, GMU shall not unreasonably withhold consent to reimburse CLSUD for those expenses and shall thereafter reimburse CLSUD for its actual expenses.

10. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. ALL ACTS REQUIRED OR PERMITTED TO BE PERFORMED HEREUNDER ARE PERFORMABLE IN HAYS COUNTY, TEXAS. IT IS AGREED THAT ANY CIVIL ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HERewith, SHALL BE BROUGHT IN A COURT OF COMPETENT JURISDICTION SITTING IN HAYS COUNTY, TEXAS. IT IS AGREED THAT ANY ADMINISTRATIVE LAW ACTION BROUGHT TO ENFORCE OR CONSTRUE THE TERMS OR PROVISIONS HEREOF OR TO ENJOIN OR REQUIRE THE PERFORMANCE OF ANY ACT IN CONNECTION HERewith, SHALL BE BROUGHT AT THE PUC OR ITS SUCCESSOR AGENCY(IES).
11. Construction and Severability. If this Agreement, or any word, clause, sentence, paragraph or other part thereof, shall be susceptible to more than one conflicting interpretation, then the interpretation which is more consistent with the general purposes and objectives of this Agreement shall govern. In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
12. Unintended Omission. If any punctuation, word, clause, sentence, or provision necessary to give meaning, validity, or effect to any other word, clause, sentence, or provision appearing in this Agreement shall be omitted here from, then it is hereby declared that such omission was unintentional and that the omitted punctuation, word, clause, sentence, or provision shall be supplied by inference.
13. Amendment. This Agreement may not be amended or terminated except by an instrument signed by all Parties to this Agreement.
14. Notice. All notices and important information by and to each Party shall be sent by certified mail, return receipt requested and email as follows:

Gristmill Utility Company, LLC
Attn.: Steven Greenberg
1918 Summerwood
San Antonio, Texas 78232
steveng@bvrwater.com

County Line Special Utility District
Attn.: Daniel Heideman, General Manager
8870 Camino Real
Uhland, Texas 78640
heideman@clsud.com

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115. Entire Agreement. This Agreement reflects the entire agreement between the Parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the Parties in connection herewith.
116. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall be construed as one and the same instrument.
117. Authority. Each Party represents that the individual named below is duly authorized to execute this Agreement on its behalf.

WHEREFORE, this Agreement is entered into and effective this 21 day of AUGUST, 2019 ("Effective Date").

GRISTMILL UTILITY COMPANY, LLC

by: 

Steven Greenberg, Member

COUNTY LINE SPECIAL UTILITY DISTRICT

by: 

Daniel Heideman, General Manager

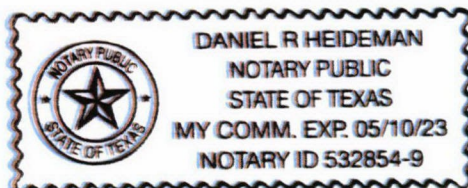


EXHIBIT A

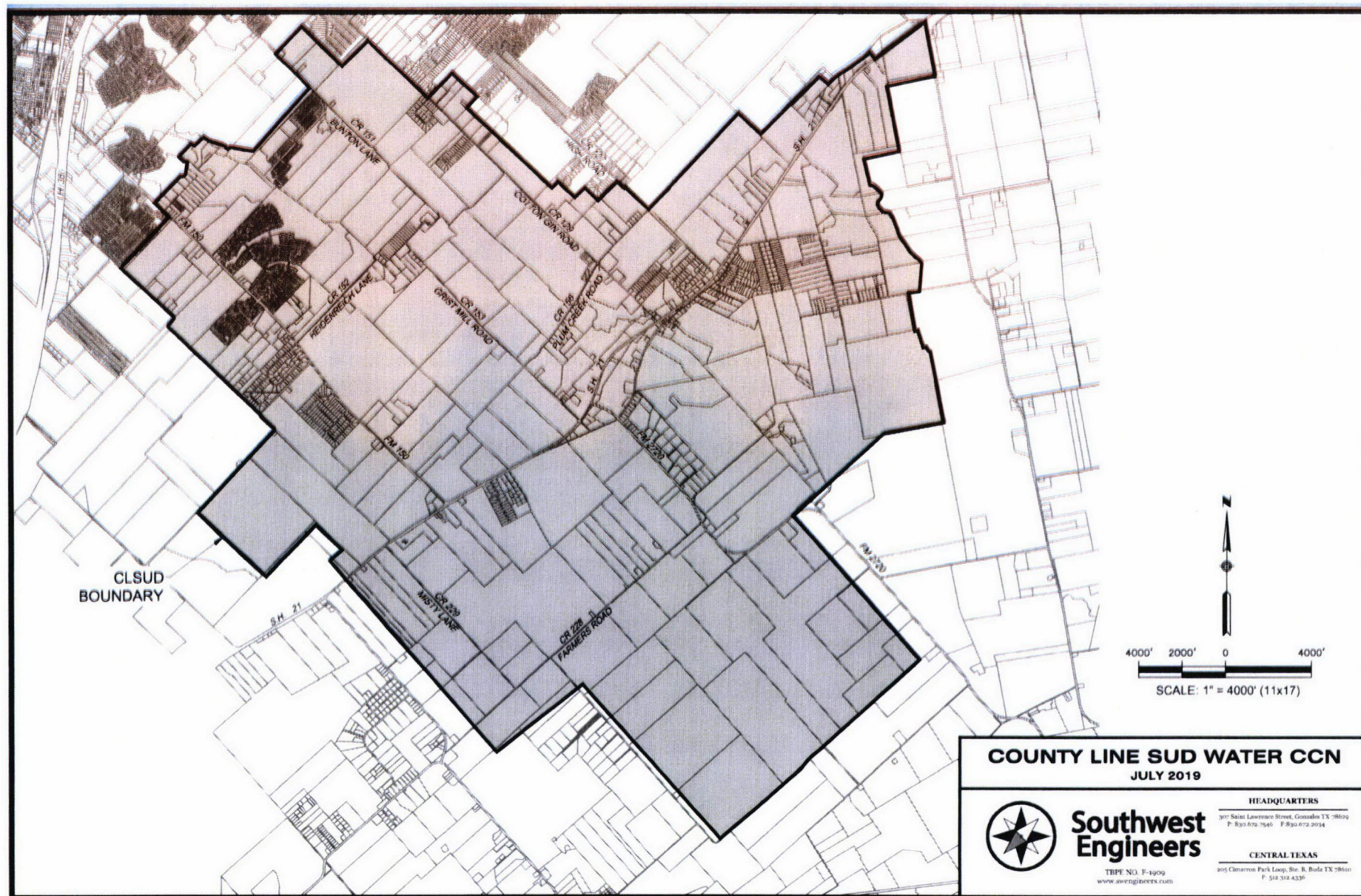


EXHIBIT B



EXHIBIT C

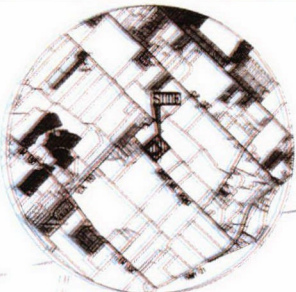
GRIST MILL HIGHLANDS SUBDIVISION SECTION 1

LEGEND

- 1/2" IRON ROD FOUND
- 1/2" CAPPED IRON ROD SET
- ✱ COTTON SPINDLE FOUND
- 23 LOT NUMBER
- ② BLOCK
- W.L. WATER LINE EASEMENT
- P.U. PUBLIC UTILITY EASEMENT
- L.S.E. LANDSCAPE EASEMENT
- D.E. DRAINAGE EASEMENT
- (000) DRAINAGE EASEMENT MEASUREMENTS

SCALE: 1" = 100'

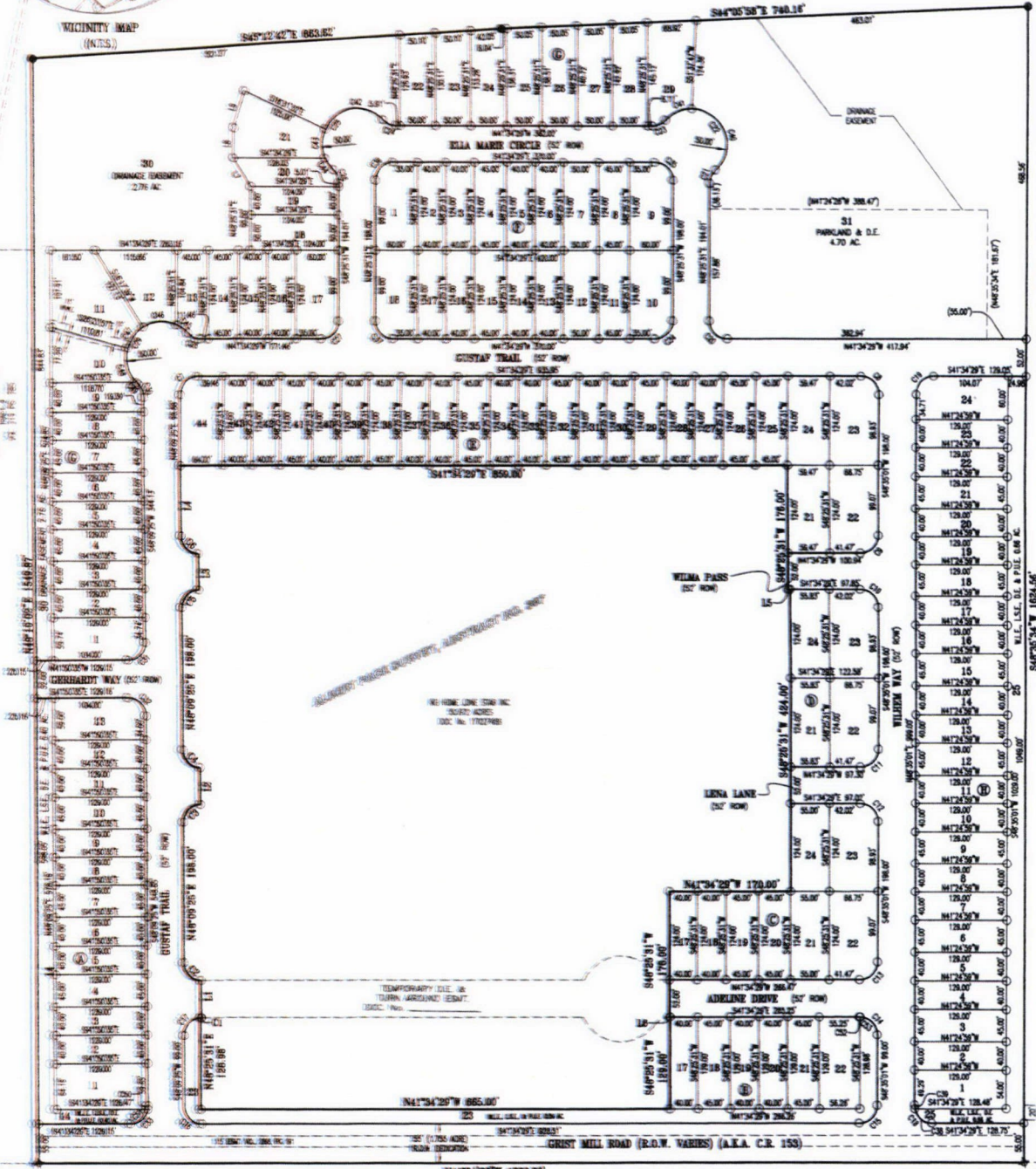
0 50 100 200



VICINITY MAP
(N.T.S.)

APPROXIMATE LOCATION OF
FEMA 100 YEAR FLOODPLAIN

TRAIL, WILSON JR.
(775.5 AC)
VEL. 178.4 FEET



(CONTAINED 100 ACRES)
PLAT 100-223-2
IN 54, 55, 56, 57, 58

SHEET NO. 1 OF 3

Carlson, Brigrance & Doering, Inc.
 FIDELITY ID #87971 • REG. # 10024900
 Civil Engineering • Surveying
 5501 West William Cannon • Austin, Texas 78749
 Phone No. (512) 280-5160 • Fax No. (512) 280-5165

PATH-J\4932\SURVEY\GRIST MILL HIGHLANDS PLAT-SEC 1

GRIST MILL HIGHLANDS SUBDIVISION SECTION 1

STATE OF TEXAS)
COUNTY OF HAYS)
KRB HOME LOAN STAR INC., BEING THE OWNER OF 34.485 ACRES OF LAND OUT OF THE ALBERT PACE SURVEY, ABSTRACT NUMBER 367 SITUATED IN HAYS COUNTY, TEXAS AS CONVEYED BY DEED RECORDED IN DOCUMENT NUMBER 17027489 OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS, DO HEREBY SUBDIVIDE 34.485 ACRES OF LAND TO BE KNOWN AS:

"GRIST MILL HIGHLANDS SUBDIVISION SECTION 1"

IN ACCORDANCE WITH THE PLAT SHOWN HEREON, SUBJECT TO ANY AND ALL EASEMENTS OR RESTRICTIONS HERETOFORE GRANTED, AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS, ALLEYS, PARKS, WATERCOURSES, DRAINAGE EASEMENTS, AND PUBLIC PLACES SHOWN ON THIS PLAT.

5/22/18
JOHN THOMAS, PRESIDENT
KRB HOME LOAN STAR INC.
10850 PECAN PARK BLVD., SUITE 200
AUSTIN, TEXAS 78750

STATE OF TEXAS)
COUNTY OF HAYS)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON May 22, 2018 BY JOHN THOMAS, PRESIDENT, ON BEHALF OF SAID COMPANY:

Susan D. Martin
NOTARY PUBLIC, STATE OF TEXAS



CITY OF UHLAND)
CERTIFICATE OF APPROVAL)

ON THE 22nd DAY OF May, 2018, THIS PLAT WAS FULLY APPROVED BY THE CITY COUNCIL OF THE CITY OF UHLAND, TEXAS.

Sharon G. Hunter
CITY SECRETARY

STATE OF TEXAS)
COUNTY OF HAYS)

I, LIZ G. DONAZALEZ, COUNTY CLERK OF HAYS COUNTY, TEXAS, DO HEREBY CERTIFY THAT THE FOREGOING INSTRUMENT OF WRITING WITH ITS CERTIFICATE OF AUTHENTICATION WAS FILED FOR RECORD IN MY OFFICE ON THE 22nd DAY OF May, 2018, A.D., AND FULLY RECORDED ON THE 22nd DAY OF May, 2018, A.D., AT 10:22 O'CLOCK A.M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK 180184635 PAGE(S) 1.

WITNESS MY HAND AND SEAL OF OFFICE THIS 22nd DAY OF May, 2018, A.D.

Liz G. Donazalez
COUNTY CLERK
HAYS COUNTY, TEXAS



STATE OF TEXAS)
COUNTY OF TRAVIS)

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF TEXAS, HEREBY CERTIFY THAT PROPER ENGINEERING CONSIDERATION HAS BEEN GIVEN THIS PLAT.

DO HEREBY CERTIFY THAT NO PORTION OF THIS PROPERTY IS LOCATED WITHIN A DESIGNATED 100-YEAR FLOOD ZONE AREA, AS Delineated ON THE FLOOD INSURANCE RATE MAP (FIRM) COMMUNITY PANELS 48020C0405, DATED SEPTEMBER 02, 2005, AS PREPARED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY. ADDITIONALLY, STORMWATER RUNOFF FROM THE 100 YEAR STORM EVENT SHALL BE CONTAINED WITHIN THE DRAINAGE FACILITIES TO BE LOCATED WITHIN THE RIGHTS-OF-WAY, AND /OR OPEN SPACE AND DRAINAGE EASEMENT LOTS, AND THAT THE LOCATION AND DIMENSIONS OF PROPOSED STREETS CONFORM WITH CITY OF UHLAND SUBDIVISION ORDINANCE.

Charles R. Brigrance, Jr.
DATE 5/21/18
CHARLES R. BRIGRANCE, JR., P.E., 46346
CARLSON, BRIGRANCE & DOERING, INC.
5501 WEST WILLIAM CANNON
AUSTIN, TEXAS 78749
(512) 280-5160



CARLSON, BRIGRANCE & DOERING, INC.
1847339

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, THE UNDERSIGNED, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS PLAT IS TRUE AND CORRECTLY MADE AND IS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION ON THE GROUND AND THAT THE CORNER MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

Arnon W. Thomason
DATE 5/21/18
ARNON W. THOMASON, R.P.L.S. #6204
CARLSON, BRIGRANCE & DOERING, INC.
5501 WEST WILLIAM CANNON
AUSTIN, TEXAS 78749
arson@cbdoering.com



DATE: APRIL 18, 2018

ACREAGE: 34.485

SURVEY: ALBERT PACE SURVEY, ABSTRACT # 367

TOTAL LOTS:	131
SINGLE FAMILY LOTS:	126
D.E. LOTS:	1
D.E. & PARK LAND LOTS:	1
W.L.E., L.S.E., D.E. & P.L.E. LOTS:	2
W.L.E., L.S.E. & P.L.E. LOTS:	1

NUMBER OF BLOCKS: 8
FEMA MAP NO. 48020C0405 F
HAYS COUNTY, TEXAS DATED SEPTEMBER 2, 2005

OWNER: KRB HOME LOAN STAR INC.
10850 PECAN PARK BLVD., SUITE 200
AUSTIN, TEXAS 78750
(512) 732-0300

ENGINEER & SURVEYOR:
CARLSON, BRIGRANCE & DOERING, INC.
5501 WEST WILLIAM CANNON DRIVE
AUSTIN, TX 78749
(512) 280-5160 PHONE
(512) 280-5165 FAX

NOTES:

ACCORDING TO THE CURRENT FEMA FLOOD INSURANCE RATE MAP NUMBER 48020C0405 SEPTEMBER 02, 2005, HAYS COUNTY, TEXAS, NO PORTION OF THIS TRACT LIES WITHIN THE DESIGNATED HUNDRED YEAR FLOODPLAIN FLOOD HAZARD AREA.

1. NO LOT SHALL BE OCCUPIED UNTIL CONNECTED TO COUNTY LINE SPECIAL UTILITY DISTRICT WATER SYSTEM.
2. THIS PLAT IS NOT LOCATED IN THE EDWARDS AQUIFER RECHARGE ZONE.
3. NO LOTS ARE TO BE OCCUPIED UNTIL PUBLIC SEWER, WATER AND ELECTRICITY AND ROADS HAVE BEEN PROVIDED AND CONSTRUCTION IS COMPLETED AND APPROVED.
4. STORMWATER SHOULD BE DETAINED BY THE PLANNED DEVELOPMENT DISTRICT (PDD) AS APPROVED.
5. 10' P.L.E. HEREBY DEDICATED ADJACENT TO RIGHTS-OF-WAY.
6. UNDERGROUND UTILITIES ARE APPROVED FOR THIS SUBDIVISION.
7. THE ROADWAYS AND DRAINAGE INFRASTRUCTURE SERVING THE SUBDIVISION WILL BE DEDICATED TO AND MAINTAINED BY THE CITY OF UHLAND.
8. LOT 14, BLOCK "A", LOT 23, BLOCK "B", LOTS 30 AND 31, BLOCK "C", AND LOT 25, BLOCK "D" WILL BE OWNED BY THE CITY OF UHLAND AND MAINTAINED BY THE HOMEOWNER ASSOCIATION (HOA).
9. ALL DRAINAGE EASEMENTS ON PRIVATE PROPERTY SHALL BE MAINTAINED BY THE PROPERTY OWNER OR ASSIGNS.
10. THIS SUBDIVISION IS WITHIN THE HAYS CONSOLIDATED INDEPENDENT SCHOOL DISTRICT.
11. DEVELOPMENT OF THIS TRACT SHALL CONFORM WITH THE CITY OF UHLAND REQUIREMENTS AS DEFINED BY THE DEVELOPMENT AGREEMENT.
12. DEVELOPMENT WILL COMPLY WITH CITY OF UHLAND AND COUNTY LINE SPECIAL UTILITY DISTRICT REQUIREMENTS AS APPLICABLE.
13. THE ROADWAYS AND DRAINAGE INFRASTRUCTURE SERVING THE SUBDIVISION WILL BE DEDICATED TO AND MAINTAINED BY THE CITY OF UHLAND.
14. IN ORDER TO PROMOTE SAFE USE OF ROADWAYS AND PRESERVE THE CONDITION OF PUBLIC ROADWAYS, NO DRIVEWAY CONSTRUCTED ON ANY LOT WITHIN THE SUBDIVISION SHALL BE PERMITTED ACCESS ONTO A PUBLICLY DEDICATED COUNTY ROADWAY UNLESS A DRIVEWAY PERMIT HAS BEEN ISSUED BY THE COUNTY ROAD AND BRIDGE DEPARTMENT.

TELEPHONE SERVICES PROVIDED BY - FRONTIER

ELECTRIC SERVICES PROVIDED BY - PEC

WATER AND WASTEWATER SERVICES PROVIDED BY - COUNTY LINE WATER SUPPLY CORP.

SHEET NO. 2 OF 3

Carlson, Brigrance & Doering, Inc.
FIRM ID #93791 • REG. # 10024900

Civil Engineering	• Surveying
5501 West William Cannon	• Austin, Texas 78749
Phone No. (512) 280-5160	• Fax No. (512) 280-5165

PATH-J\4932\SURVEY\GRIST MILL HIGHLANDS PLAT-SEC 1

EXHIBIT D

Docket No. 50325 - Exhibit B

Bowman
CONSULTING

LAND TITLE SURVEY
187.744 ACRES OF LAND OUT OF THE
THOMAS WESTBROOK SURVEY, ABSTRACT NO. 458 AND THE
L & G N. R.R. COMPANY SURVEY, ABSTRACT NO. 577
HAYS COUNTY, TEXAS

PLAN #: 7500B