



Filing Receipt

Received - 2022-02-23 10:56:07 AM

Control Number - 53018

ItemNumber - 5

DOCKET NO. 53018

**PETITION OF MICHAEL D. DRY TO § PUBLIC UTILITY COMMISSION
AMEND MONARCH UTILITIES I LP'S §
CERTIFICATE OF CONVENIENCE § OF TEXAS
AND NECESSITY IN TARRANT §
COUNTY BY STREAMLINED §
EXPEDITED RELEASE §**

**PETITIONER MICHAEL D. DRY'S SUPPLEMENTAL INFORMATION IN SUPPORT
OF HIS PETITION FOR STREAMLINED EXPEDITED RELEASE**

TO THE PUBLIC UTILITY COMMISSION OF TEXAS:

On December 22, 2021, Michael D. Dry (“Mr. Dry”) filed a petition to amend Monarch Utilities I LP’s certificate of convenience and necessity number (“CCN”) 12983 in Tarrant County, Texas through a streamlined expedited release (“SER”). On January 24, 2022, the Public Utility Commission of Texas (“PUC”) recommended to the State Office of Administrative Hearings that the petition was administratively incomplete because (1) it believed the four tracts described in the petition are not under common ownership, and (2) the maps did not satisfy PUC mapping requirements. On January 26, 2022, the Administrative Law Judge signed an order agreeing with the PUC’s recommendation and giving Mr. Dry until February 23, 2022 to provide supplemental information to cure the deficiencies identified by the PUC. Pursuant to that order and the PUC’s recommendation, Mr. Dry submits this supplemental filing demonstrating that the four tracts described in the petition are under the exclusive ownership, possession, management, or control of Mr. Dry, and presenting revised maps that comply with PUC requirements and guidance.

DEFICIENCY 1: COMMON OWNERSHIP

In its recommendation, the PUC stated that ownership documents for the four contiguous tracts of land described in Mr. Dry’s petition do not demonstrate that the four tracts were under “common ownership” as that term is used in 16 Texas Administrative Code section 24.3(38). Mr.

Dry respectfully asks the PUC to reconsider its recommendation because “common ownership” is not defined in Chapter 13 of the Water Code¹ or in the PUC rules governing SERs, and the reality of property ownership is often complex. When different but contiguous tracts are under the exclusive ownership, possession, management, control, and/or financial responsibility of one person—as is the case here—that person should be allowed to apply for a SER on behalf of all the tracts together, provided all other requirements are met. This would be consistent with the common definition of ownership, as well as with PUC rules and the way courts have discussed the concept of property ownership.

Black’s Law Dictionary defines “own” as “to have legal title to” or the right to “have or possess as property.” BLACKS LAW DICTIONARY 1280 (10th ed. 2014). The term “owner” is defined as someone who has the right “to possess, use, and convey something.” *Id.* The definition of “tract of land” in section 24.3(38) contemplates contiguous, physical contact between different tracts or parcels, such that they are not completely separated by property with different ownership like roads or railroads. Other definitions also imply that ownership of land can be more complex than one name on one deed, referencing “multiple deeds,” “separate surveys,” “multiple owners,” “partnerships of two or more people,” “joint or common interests,” and so on. One court discussed common ownership in the same breath as common or exclusive control, interrelation of operations, common management, and common financial control. *See, e.g., Janaki v. C.H. Wilkinson*

¹ Chapter 13 does provide that the terms “landowner,” “owner of a tract of land,” and “owners of each of tract of land” can include multiple owners of a single deeded tract of land as shown in appraisal records. Tex. Water Code § 13.002(1-a). Chapter 13 also defines the term “person” to include “natural persons, partnerships of two or more people having a joint or common interest...” *Id.* § 13.002(15). Neither of the Chapter 13 definitions are exclusive, nor do they directly describe or apply to the situation presented here. Further, neither section 13.254 (expedited releases) nor section 13.2541 (streamlined expedited releases) requires or refers to “common ownership,” instead using multiple terms such as “owner of a tract of land” or “landowner.” *See, e.g., id.* § 13.254(a-1), (a-2). Section 13.501 defines the term “owner” in the apartment or manufactured home context to include “any individual . . . expressly identified in a lease agreement as the landlord...”. *Id.* § 13.501(5).

Physician Network, 624 S.W.3d 623, 630 (Tex. App.—Corpus Christi 2021, no pet.) (common ownership in the employment context).

The Texas Supreme Court considered whether the phrase “property it owns” in a statute allowing a tax exemption for commercial housing entities meant strict legal (i.e., deeded) title or whether it also included “equitable title.” *AHF-Arbors at Huntsville I, LLC v. Walker County Appraisal Dist.*, 410 S.W.3d 831, 83 (Tex. 2012). The Court concluded that “owns” in that context included equitable title, favoring a more expansive definition in recognition of tiered ownership structures and “the realities of the commercial housing industry.” *Id.* at 836-38. That interpretation, the Court said, is also consistent with federal tax law, which “disregards the separate identity of some entities.” *Id.* at 837-38. Another case discussing the same statute equated equitable title with exclusive control. *Id.* at 839 (citing *Harris County Appraisal Dist. v. Primrose Houston 7 Housing, L.P.*, 238 S.W.3d 782, 787 (Tex. App.—Houston [1st Dist.] 2007, pet. denied)).

Mr. Dry’s Relationship To The Subject Property

Mr. Dry’s property is comprised of four contiguous tracts that are either owned or exclusively possessed, managed, and controlled solely by Mr. Dry. All four tracts are in uninterrupted physical contact and there is no separation of management, control, or financial responsibility. Attached as **Exhibit 5** is the affidavit of an attorney who has represented Mr. Dry in estate and business matters and who explains how Mr. Dry either owns the tracts individually or serves as the sole manager or trustee of the entities that do. The ownership of each tract of land is summarized from the affidavit as follows:

Tract 1 is owned by Dry Ranch LLC, for which Mr. Dry serves as the sole manager. Dry Ranch LLC is owned by four trusts created for the benefit of each of Mr. Dry’s children, and Mr. Dry is the sole trustee of each trust.

Tract 2 is owned by Mr. Dry individually.

Tract 3 is owned by Dry & Busby, LLC, which is owned 100% by Dry Investments LP. Dry Investments LP is comprised of two entities: (1) the MDD Family Trust (aka the Michael D. Dry Family Trust), whose sole trustee is Mr. Dry, and (2) Dry Management, for which Mr. Dry is the sole manager.

Tract 4 is owned by Dry APR LLC, of which Mr. Dry is the sole owner and manager.

In sum, Mr. Dry owns one tract individually and is the sole owner, sole manager, or sole trustee of each and every entity that, together, own the other three tracts. He exercises total and exclusive managerial and financial control over the entire four-tract property to a degree that is indistinguishable from, and functionally equivalent to, ownership and control of one single larger tract. This is evidenced by the fact that Mr. Dry has managed the four tracts as one single property for several years.

As trustee, he holds legal title and possession of the property under a fiduciary duty for the benefit of the beneficiaries. *See Sarah v. Primarily Primates, Inc.*, 255 S.W.3d 132, 145 (Tex. App.—San Antonio 2008, pet. denied). As one court put it, if the definition of “own” is “to have a legal or rightful title to” and “to possess,” then a “trustee fits entirely within the definition since a trustee is vested with legal title and has the right to possession of the trust property.” *Hallmark v. Port/Cooper-T. Smith Stevedoring Co.*, 9076 S.W.2d 586, 590 (Tex. App. Corpus Christi 1995, reh’g denied).

Mr. Dry also includes the taxes associated with the four tracts on his own individual tax return. *See* Tex. Tax Code § 32.07(a) (providing that property taxes are the personal obligation of the person who owns property); *Willacy County Appraisal District v. Sebastian Cotton & Grain, Ltd.*, 555 S.W.3d 29, 42 (Tex. 2018) (wherein the Texas Supreme Court recognized that “[a] person

who owns property is generally liable for property taxes assessed on that property”). Mr. Dry is therefore the only person with the legal right and authority—as well as the fiduciary and financial responsibility—to make decisions about how each of the four tracts is used, managed, developed, or transferred.

Lastly, Mr. Dry is the only person with the legal right and authority to submit a petition for streamlined expedited release for each of the four tracts. Therefore, even assuming that each individual tract would be large enough to separately qualify for a streamlined expedited release on its own, Mr. Dry would nevertheless be the only person who would and could make the decision to seek the SER and then apply for it.

Good Cause Exception

The PUC has the discretion to make exceptions to the requirements of Chapter 24 rules for good cause, so long as the requirements are not prescribed by statute. 16 TAC § 24.2(b). As stated above, the term “common ownership” is not defined in Chapter 13 of the Water Code. Nor does Chapter 13 otherwise address or prescribe what common ownership is supposed to mean in this context. If the PUC construes section 24.3(38) so narrowly as to conclude that common ownership does not exist here, good cause surely exists to allow for one SER petition in this instance due to Mr. Dry’s exclusive control, management, possession, and financial responsibility for the entire contiguous four-tract property, which for the reasons stated above he has the sole ability to develop. Utilizing the good cause exception in this instance complies with, and indeed, furthers the spirit and purpose of streamlined expedited releases under section 13.2541 of the Texas Water Code and 16 TAC section 24.245(h). And, it would allow Mr. Dry to exercise his legal right and fiduciary responsibility to develop the tracts under his exclusive ownership, management, or control to their highest and best use.

DEFICIENCY 2: MAPPING REQUIREMENTS

Attached as **Exhibit 6** are detail and location maps that have been revised according to PUC requirements and guidance. Also included (but not as exhibits attached to this document) are revised digital mapping files.

Dated: February 23, 2022

Respectfully Submitted,

/s/ Stephen L. Tatum, Jr.
Stephen L. Tatum Jr. (SBN 24070721)
stephen@tatumclay.com
TATUM CLAY PLLC
(817) 713-9492 telephone

ATTORNEY FOR PETITIONER MICHAEL D. DRY

EXHIBIT 5

AFFIDAVIT OF MARVIN E. BLUM

I, MARVIN E. BLUM, of Tarrant County, Texas, under penalty of perjury, declare that the following statements are true and correct to the best of my knowledge:

1. I am an attorney with The Blum Firm, PC ("Blum").
2. Blum has provided legal representation to MICHAEL D. DRY ("Dry") in various estate and business planning matters since 2016.
3. Based on the representations of Dry, it is my understanding that there are four contiguous parcels of land forming a single tract approximately 661 acres in size located in Tarrant County, Texas (the "Subject Property") owned by Dry and three entities subject to Dry's exclusive control: DRY RANCH, LLC, a Texas limited liability company ("Dry Ranch"), DRY & BUSBY, LLC, a Texas limited liability company ("Dry & Busby"), and DRY APR, LLC, a Texas limited liability company ("Dry APR").
4. Dry is the sole manager of Dry Ranch.
5. Dry Ranch is owned, in equal shares, by the SKYLAR BOYCE-DRY INVESTMENT TRUST, created by trust agreement executed December 31, 2012, the ALEXANDRA DRY INVESTMENT TRUST, created by trust agreement executed December 31, 2012, the DALTON DRY INVESTMENT TRUST, created by trust agreement executed December 31, 2012, and the ALYSSA DRY INVESTMENT TRUST, created by trust agreement executed December 31, 2012.
6. Dry is the sole trustee of each of the SKYLAR BOYCE-DRY INVESTMENT TRUST, the ALEXANDRA DRY INVESTMENT TRUST, the DALTON DRY INVESTMENT TRUST, and the ALYSSA DRY INVESTMENT TRUST.

7. Dry & Busby is owned 100% by DRY INVESTMENTS, LP, a Texas limited partnership (“Dry Investments”).

8. MDD 2017 FAMILY TRUST, created by trust agreement executed May 24, 2017, owns a 99% limited partnership interest in Dry Investments.

9. Dry is the sole trustee of MDD 2017 FAMILY TRUST.

10. DRY MANAGEMENT, LLC, a Texas limited liability company (“Dry Management”), owns a 1% general partnership interest in Dry Investments and serves as its sole general partner.

11. Dry is the sole manager of Dry Management.

12. Dry APR is owned 100% by Dry.

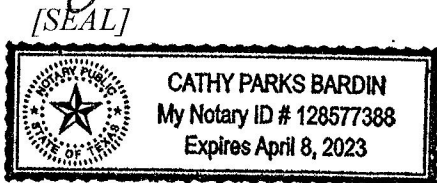
13. Dry is the sole manager of Dry APR.

Signed this the 2nd day of February, 2022.

Marvin E. Blum
MARVIN E. BLUM

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

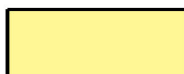



SUBSCRIBED AND SWORN TO BEFORE ME on this the 2nd day of February, 2022, by MARVIN E. BLUM, Affiant.

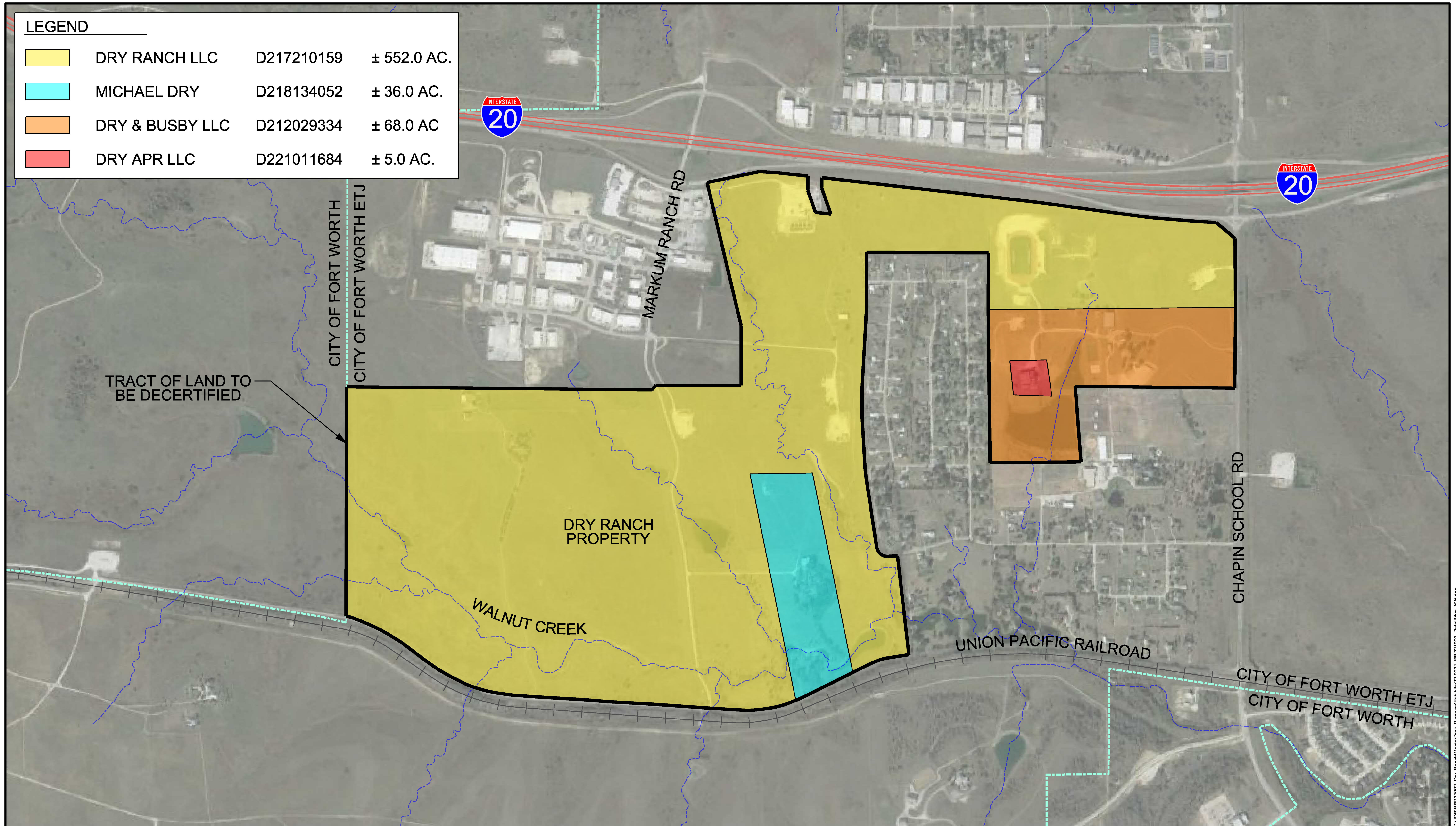


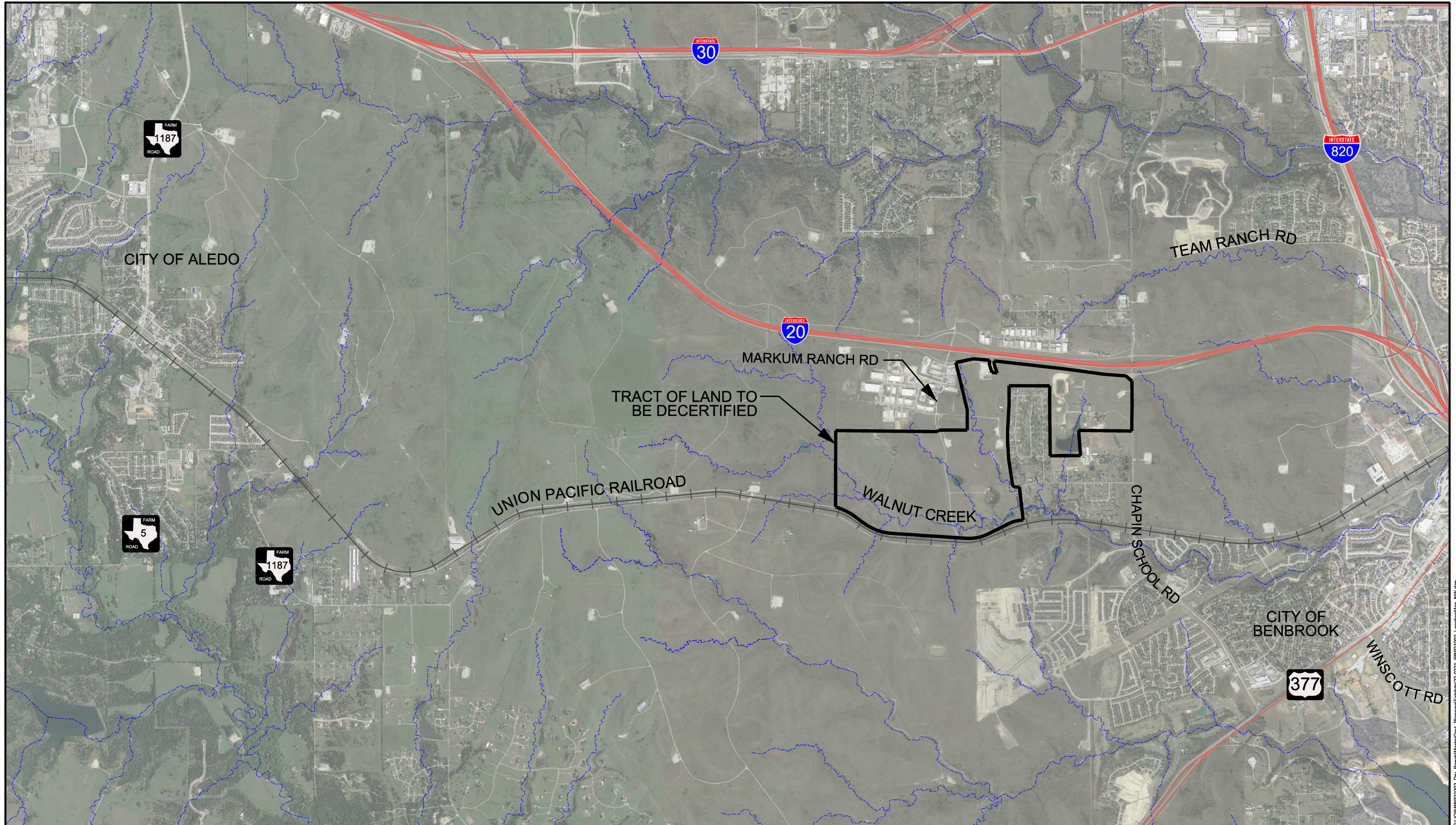
[Signature]
Notary Public in and for
The State of Texas

EXHIBIT 6

LEGEND

	DRY RANCH LLC	D217210159	± 552.0 AC.
	MICHAEL DRY	D218134052	± 36.0 AC.
	DRY & BUSBY LLC	D212029334	± 68.0 AC.
	DRY APR LLC	D221011684	± 5.0 AC.





G:\GIS\BP2102_Dry_Ranch\MasterDev_Planning\GIS\GIS22-021_RBP2102_LocationMap_NW.dgn

DRY RANCH

± 661 AC. | CITY OF FORT WORTH ETJ | FEBRUARY 2022

The following files are not convertible:

AP_Ranch2.cpg
AP_Ranch2.dbf
AP_Ranch2.prj
AP_Ranch2.sbn
AP_Ranch2.sbx
AP_Ranch2.shp

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

AP_Ranch2.shp.xml

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

AP_Ranch2.shx
Boundary_NW.cpg
Boundary_NW.dbf
Boundary_NW.prj
Boundary_NW.sbn
Boundary_NW.sbx
Boundary_NW.shp
Boundary_NW.shx
Dry_Busby.cpg
Dry_Busby.dbf
Dry_Busby.prj
Dry_Busby.sbn
Dry_Busby.sbx
Dry_Busby.shp

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Dry_Busby.shp.xml

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Dry_Busby.shx
Dry_Ranch2.cpg
Dry_Ranch2.dbf
Dry_Ranch2.prj
Dry_Ranch2.sbn
Dry_Ranch2.sbx
Dry_Ranch2.shp

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Dry_Ranch2.shp.xml

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Dry_Ranch2.shx
Michael_Dry2.cpg
Michael_Dry2.dbf
Michael_Dry2.prj
Michael_Dry2.sbn
Michael_Dry2.sbx
Michael_Dry2.shp

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Michael_Dry2.shp.xml

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.

The following files are not convertible:

Michael_Dry2.shx

Please see the ZIP file for this Filing on the PUC Interchange in order to access these files.

Contact centralrecords@puc.texas.gov if you have any questions.