



May 17, 2022

Notice is hereby given of a Regular Meeting of Nacogdoches City Council to be held on the above date in the City Council Chambers of City Hall, 202 E. Pilar Street, Nacogdoches, Texas, beginning at 5:30 p.m. for the purpose of considering the following agenda items.

Some City Council Members may attend via videoconference but a quorum of the City Council and the Presiding Officer will be present at the above-stated physical location. The meeting will be streamed live at <https://www.nactx.us/21> There will be an opportunity for the public to comment on agenda items either by teleconference or in person in Council Chambers.

Members of the public who wish to submit comments on a listed agenda item by telephone must contact the City Secretary's office by email at vinsonj@nactx.us or by calling 936-559-2506 and providing their name, telephone number and relevant agenda item upon which they wish to speak. All requests to make comments must be received by 12:00 p.m. on May 17, 2022. For all timely requests received, staff will call the submitted phone numbers directly during the meeting when the corresponding item comes up for comment. NOTE: The incoming phone call from City staff will be an unfamiliar number.

**PLEASE LIMIT PRESENTATIONS TO THREE MINUTES
(UNLESS PRIOR APPROVAL IS OBTAINED)**

1. CALL TO ORDER.
2. PLEDGE OF ALLEGIANCE.
3. ELECTION:
 - A. Canvass results of the May 7, 2022 City Council Regular Election and consider adopting a resolution declaring the results. (City Secretary)
 - B. Administer Statement of Officer and Oath of Office for newly elected Council Members. (City Secretary)
4. OPEN FORUM. Open Forum is an opportunity for citizens to speak about items not listed on the agenda. In order to address City Council please complete the Open Forum Form and submit it to the City Secretary prior to the start of the meeting. In accordance with the Texas Open Meetings Act, City Council shall not discuss, deliberate, or make any decisions on items discussed during Open Forum. Comments are limited to 3 minutes per person. Open Forum is limited to the first 5 citizens who submit an Open Forum Form.
5. ITEMS TO BE REMOVED FROM CONSENT AGENDA.
6. CONSENT AGENDA: Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.

- A. Consider approval of minutes from May 3, 2022 regular meeting. (City Secretary)
 - B. Consider approval of a resolution to rejoin the Texas Coalition for Affordable Power (TCAP) for the procurement of future electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)
 - C. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of San Augustine for the provision of law enforcement during an emergency. (Interim Police Chief)
 - D. Consider acceptance of donation in the amount of \$12,375 to the Nacogdoches Public Library through the 2022 National Endowment of the Arts Big Read Grant program. (Library Manager)
7. REGULAR AGENDA: City Council will receive staff recommendations and public input on the following items, and may deliberate and take formal action on the item.
- A. Receive a report, hold a discussion and give staff directions on delinquent tax collections and management of properties struck off at tax foreclosure sales. (City Manager)
 - B. Receive a report, hold a discussion and give staff direction on implementing a Tax Warrant Program. (City Attorney)
 - C. **Public Hearing:** Consider approval of a Specific Use Permit for an Accessory Apartment, for Lot 3, City Block 4, located at 504 North Mound Street. This request has been submitted by Michael & Marianne Elliott Keller. Case File SUP2022-02. (City Planner)
 - D. **Public Hearing:** Consider approval of a Zone Change from R-2, Single Family to R-3, Two Family for approximately 1.5 acres, being lots 1-10, of the Berger Hill Addition, generally located at the southeast corner of Nash and Dolph Street. This request has been submitted by Rolando Rodriguez. Case File ZON2022-04. (City Planner)
 - E. **Public Hearing:** Consider approval of a Zone Change from PD, Planned Development District to R-4, Multi Family for approximately 3 acres, being Lots 5 and 6, Block 4, of the Creek Bend Subdivision – Unit 2, generally located at the southeast corner of South Steen Drive and Creek Bend Blvd. This request has been submitted by Mario Wesley. Case File ZON2022-03. (City Planner) **(PLEASE NOTE THAT AT THE REGULAR MEETING OF THE PLANNING & ZONING COMMISSION HELD ON MAY 9TH, 2022, THE COMMISSION VOTED UNANIMOUSLY TO POSTPONE THE PUBLIC HEARING TO THE REGULAR MEETING OF THE PLANNING & ZONING COMMISSION ON JUNE 13, 2022.)**
8. EXECUTIVE SESSION: Executive Sessions are for City Council to receive information and deliberate on matters specified in Subchapter D of the Texas Open Meetings Act.

Council may reconvene in open session to vote on the matter.

- A. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the employment of a public officer or employee. The subject of this executive session is to report on negotiations for a separation agreement with the Chief of Police.

9. Open for action, if any, on Executive Session item(s).

10. ADJOURN.



Jan Vinson, City Secretary



This agenda is posted as required under G. C. Section 551.041. For more information or a copy of the Open Meetings Act, please contact Attorney General of Texas at 1-800-252-8011; City Secretary at 936/559-2506 or visit City of Nacogdoches web site at www.nactx.us.

CERTIFICATION

I certify the notice of meeting was posted in the directory outside of City Hall, 202 E. Pilar Street, Nacogdoches, Texas on May 12, 2022 at 8 a.m. and remained posted until meeting convened.

Jan Vinson, City Secretary



City Council Meeting

Date: May 17, 2022

Agenda Item: 3.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Canvass results of the May 7, 2022 City Council Regular Election and consider adopting a resolution declaring the results. (City Secretary)

SUMMARY/BACKGROUND: Election results from the General Election held on May 7, 2022 are not considered official until City Council canvasses the results and adopts a resolution declaring the results.

Todd Stallings, Nacogdoches County Elections Administrator, will provide a canvassing report to the City Secretary which will contain the total number of votes for each candidate and the sum of the precinct/ward totals. City Council will be provided with the canvassing report prior to the meeting to review and if in agreement, Council will approve a resolution declaring the results.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS:

1. Unofficial Final Results
2. Canvassing Totals
3. Count_Canvass Report
4. Cumulative Results
5. Draft Resolution Canvassing Election Results

Cumulative Results ReportAmendment/City/School Elections -
20220507

Run Time 8:37 PM

Run Date 05/07/2022

NACOGDOCHES COUNTY, TEXAS

General and Special Elections

5/7/2022

Page 1

Unofficial Results**Registered Voters**

4859 of 67396 = 7.21%

Precincts Reporting

24 of 24 = 100.00%

STATE OF TEXAS PROPOSITION 1

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
For		491	85.39%	948	85.56%	723	86.69%	2,162	85.90%
Against		84	14.61%	160	14.44%	111	13.31%	355	14.10%
Cast Votes:		575	100.00%	1,108	100.00%	834	100.00%	2,517	100.00%

STATE OF TEXAS PROPOSITION 2

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
For		457	79.07%	933	84.28%	707	83.67%	2,097	82.89%
Against		121	20.93%	174	15.72%	138	16.33%	433	17.11%
Cast Votes:		578	100.00%	1,107	100.00%	845	100.00%	2,530	100.00%

Cushing Independent School District Trustee - Vote for none, one, two, three or four

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Jared LoStracco		20	22.99%	67	23.67%	80	18.10%	167	20.57%
Carrie Duncan		17	19.54%	57	20.14%	103	23.30%	177	21.80%
Jamie Dawson		17	19.54%	29	10.25%	60	13.57%	106	13.05%
Anna Thomas		9	10.34%	44	15.55%	64	14.48%	117	14.41%
Lynda Langham		14	16.09%	53	18.73%	69	15.61%	136	16.75%
Monni Gary		1	1.15%	23	8.13%	30	6.79%	54	6.65%
Dolan Procell		9	10.34%	10	3.53%	36	8.14%	55	6.77%
Cast Votes:		87	100.00%	283	100.00%	442	100.00%	812	100.00%

Chireno Independent School District Trustee - Vote for none, one, two or three

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Craig Fowler		2	6.06%	39	14.23%	33	11.04%	74	12.21%
Rob Czekner		6	18.18%	61	22.26%	70	23.41%	137	22.61%
Jared Chandler		3	9.09%	20	7.30%	19	6.35%	42	6.93%
Jason Brown		8	24.24%	67	24.45%	80	26.76%	155	25.58%
Jacob Permenter		10	30.30%	66	24.09%	76	25.42%	152	25.08%
Shane Babbs		4	12.12%	21	7.66%	21	7.02%	46	7.59%
Cast Votes:		33	100.00%	274	100.00%	299	100.00%	606	100.00%

**UNOFFICIAL
RESULTS**

Cumulative Results ReportAmendment/City/School Elections -
20220507Run Time 8:37 PM
Run Date 05/07/2022**NACOGDOCHES COUNTY, TEXAS**

General and Special Elections

5/7/2022

Page 2

Unofficial ResultsRegistered Voters
4859 of 67396 = 7.21%Precincts Reporting
24 of 24 = 100.00%**Nacogdoches Independent School District Trustee, At-Large - Vote for none or one**

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Demond Jackson		116	32.49%	182	19.34%	92	23.06%	390	22.98%
Kallie Pitcock		95	26.61%	286	30.39%	152	38.10%	533	31.41%
Greg McEntire		52	14.57%	250	26.57%	89	22.31%	391	23.04%
Mike Claude		94	26.33%	223	23.70%	66	16.54%	383	22.57%
Cast Votes:		357	100.00%	941	100.00%	399	100.00%	1,697	100.00%

Nacogdoches Independent School District Trustee, Single Member District 1 - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
James A. Ervin		91	100.00%	106	100.00%	67	100.00%	264	100.00%
Cast Votes:		91	100.00%	106	100.00%	67	100.00%	264	100.00%

City of Nacogdoches Councilmember - Southeast Ward - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Benjamin Sullivan		29	34.52%	42	33.07%	54	68.35%	125	43.10%
Roy Boldon		55	65.48%	85	66.93%	25	31.65%	165	56.90%
Cast Votes:		84	100.00%	127	100.00%	79	100.00%	290	100.00%

City of Nacogdoches Councilmember - Southwest Ward - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Jay Anderson		7	17.50%	33	15.07%	16	18.18%	56	16.14%
Donald Lacey		18	45.00%	40	18.26%	14	15.91%	72	20.75%
Chad Huckaby		15	37.50%	146	66.67%	58	65.91%	219	63.11%
Cast Votes:		40	100.00%	219	100.00%	88	100.00%	347	100.00%

*** End of report ***

GENERAL ELECTION

MAY 7, 2022

City Council Member - Southeast Ward

4,134 Registered Voters

Choice	Absentee Voting		Early Voting		Election Day Voting		Total	
Ben Sullivan	30	34.88%	42	33.07%	54	68.35%	126	43.15%
Roy Boldon	56	65.12%	85	66.93%	25	31.65%	166	56.85%
<i>Cast Votes</i>	86	100%	127	100%	79	100%	292	100%

City Council Member - Southwest Ward

3,528 Registered Voters

Choice	Absentee Voting		Early Voting		Election Day Voting		Total	
Jay Anderson	7	17.50%	33	15.07%	16	18.18%	56	16.14%
Donald Lacey	18	45.00%	40	18.26%	14	15.91%	72	20.75%
Chad Huckaby	15	37.50%	146	66.67%	58	65.91%	219	63.11%
<i>Cast Votes</i>	40	100%	219	100%	88	100%	347	100%

Canvass Results Report

Amendment/City/School Elections -
20220507

Run Time 2:20 PM

Run Date 05/12/2022

NACOGDOCHES COUNTY, TEXAS

General and Special Elections

5/7/2022

Page 8

Official Results

Registered Voters
4877 of 67396 = 7.24%

Precincts Reporting
24 of 24 = 100.00%

City of Nacogdoches Councilmember - Southeast Ward - Vote for none or one

Precinct	Benjamin Sullivan	Roy Boldon	Cast Votes	Absentee Voting Ballots Cast	Early Voting Ballots Cast	Election Day Voting Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
NAC - 01	0	0	0	0	0	0	0	38	0.00%
NAC - 04	26	12	38	4	26	8	38	1,242	3.06%
NAC - 07	100	154	254	86	102	72	260	2,854	9.11%
Totals	126	166	292	90	128	80	298	4,134	7.21%

Canvass Results Report

Amendment/City/School Elections -
20220507

Run Time 2:20 PM

Run Date 05/12/2022

NACOGDOCHES COUNTY, TEXAS

General and Special Elections

5/7/2022

Page 9

Official Results

Registered Voters
4877 of 67396 = 7.24%

Precincts Reporting
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City of Nacogdoches Councilmember - Southwest Ward - Vote for none or one

Precinct	Jay Anderson	Donald Lacey	Chad Huckaby	Cast Votes	Absentee Voting Ballots Cast	Early Voting Ballots Cast	Election Day Voting Ballots Cast	Total Ballots Cast	Registered Voters	Turnout Percentage
NAC - 02	0	0	0	0	0	0	0	0	4	0.00%
NAC - 05	53	61	186	300	32	197	75	304	2,807	10.83%
NAC - 08	3	11	33	47	8	24	15	47	717	6.56%
Totals	56	72	219	347	40	221	90	351	3,528	9.95%

Cumulative Results Report

NACOGDOCHES COUNTY, TEXAS

Official Results

Amendment/City/School Elections -
20220507

General and Special Elections

Registered Voters

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Precincts Reporting

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Run Time 2:18 PM
Run Date 05/12/2022

5/7/2022

Page 1

STATE OF TEXAS PROPOSITION 1

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
For		498	85.42%	948	85.56%	723	86.69%	2,169	85.90%
Against		85	14.58%	160	14.44%	111	13.31%	356	14.10%
Cast Votes:		583	100.00%	1,108	100.00%	834	100.00%	2,525	100.00%

STATE OF TEXAS PROPOSITION 2

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
For		463	79.01%	933	84.28%	707	83.67%	2,103	82.86%
Against		123	20.99%	174	15.72%	138	16.33%	435	17.14%
Cast Votes:		586	100.00%	1,107	100.00%	845	100.00%	2,538	100.00%

Cushing Independent School District Trustee - Vote for none, one, two, three or four

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Jared LoStracco		20	22.99%	67	23.67%	80	18.10%	167	20.57%
Carrie Duncan		17	19.54%	57	20.14%	103	23.30%	177	21.80%
Jamie Dawson		17	19.54%	29	10.25%	60	13.57%	106	13.05%
Anna Thomas		9	10.34%	44	15.55%	64	14.48%	117	14.41%
Lynda Langham		14	16.09%	53	18.73%	69	15.61%	136	16.75%
Monni Gary		1	1.15%	23	8.13%	30	6.79%	54	6.65%
Dolan Procell		9	10.34%	10	3.53%	36	8.14%	55	6.77%
Cast Votes:		87	100.00%	283	100.00%	442	100.00%	812	100.00%

Chireno Independent School District Trustee - Vote for none, one, two or three

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Craig Fowler		2	6.06%	39	14.23%	33	11.04%	74	12.21%
Rob Czekner		6	18.18%	61	22.26%	70	23.41%	137	22.61%
Jared Chandler		3	9.09%	20	7.30%	19	6.35%	42	6.93%
Jason Brown		8	24.24%	67	24.45%	80	26.76%	155	25.58%
Jacob Permenter		10	30.30%	66	24.09%	76	25.42%	152	25.08%
Shane Babbs		4	12.12%	21	7.66%	21	7.02%	46	7.59%
Cast Votes:		33	100.00%	274	100.00%	299	100.00%	606	100.00%

Cumulative Results Report**NACOGDOCHES COUNTY, TEXAS****Official Results**Amendment/City/School Elections -
20220507

General and Special Elections

Registered Voters

4877 of 67396 = 7.24%

Precincts Reporting

24 of 24 = 100.00%

Run Time 2:18 PM

5/7/2022

Run Date 05/12/2022

Page 2

Nacogdoches Independent School District Trustee, At-Large - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Demond Jackson		119	32.69%	182	19.34%	92	23.06%	393	23.06%
Kallie Pitcock		95	26.10%	286	30.39%	152	38.10%	533	31.28%
Greg McEntire		52	14.29%	250	26.57%	89	22.31%	391	22.95%
Mike Claude		98	26.92%	223	23.70%	66	16.54%	387	22.71%
Cast Votes:		364	100.00%	941	100.00%	399	100.00%	1,704	100.00%

Nacogdoches Independent School District Trustee, Single Member District 1 - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
James A. Ervin		93	100.00%	106	100.00%	67	100.00%	266	100.00%
Cast Votes:		93	100.00%	106	100.00%	67	100.00%	266	100.00%

City of Nacogdoches Councilmember - Southeast Ward - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Benjamin Sullivan		30	34.88%	42	33.07%	54	68.35%	126	43.15%
Roy Boldon		56	65.12%	85	66.93%	25	31.65%	166	56.85%
Cast Votes:		86	100.00%	127	100.00%	79	100.00%	292	100.00%

City of Nacogdoches Councilmember - Southwest Ward - Vote for none or one

Choice	Party	Absentee Voting		Early Voting		Election Day Voting		Total	
Jay Anderson		7	17.50%	33	15.07%	16	18.18%	56	16.14%
Donald Lacey		18	45.00%	40	18.26%	14	15.91%	72	20.75%
Chad Huckaby		15	37.50%	146	66.67%	58	65.91%	219	63.11%
Cast Votes:		40	100.00%	219	100.00%	88	100.00%	347	100.00%

*** End of report ***

RESOLUTION CANVASSING RETURNS AND DECLARING RESULTS OF THE CITY COUNCIL GENERAL ELECTION FOR COUNCIL MEMBER SOUTHEAST WARD AND COUNCIL MEMBER SOUTHWEST WARD.

WHEREAS, under and by virtue of Resolution No. 1289-02-22 duly passed by the City Council of the City of Nacogdoches, Texas on February 1, 2022 calling for the General Election of Southeast Ward Council Member and Southwest Ward Council Member held on May 7, 2022; and,

WHEREAS, upon consideration of the returns of said election, it appears that the same was in all respects legally held; due notice had been given; returns thereof were duly and legally made; and were cast at said election:

FOR CITY COUNCIL MEMBER

Benjamin Sullivan
Roy Boldon

SOUTHEAST WARD

FOR CITY COUNCIL MEMBER

Jay Anderson
Donald Lacey
Chad Huckaby

SOUTHWEST WARD

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION 1: THAT _____ received the majority of the votes for City Council Member Southeast Ward and is therefore duly elected.

SECTION 2: THAT _____ received the majority of the votes for City Council Member Southwest Ward and is therefore duly elected.

SECTION 3: THAT THE AFORESAID ELECTION was duly and legally called and notice thereof given in accordance with the laws of the State of Texas and the resolution calling said election; that said election was held in strict conformity with the Constitution and laws of the State of Texas; and the returns thereof have been properly made to the officials of the City entitled to receive same; and that only qualified voters of the City were permitted to vote at said election, and properly represents the desires of those qualified to vote as aforesaid.

PASSED AND APPROVED this the 17th day of May, 2022.

Jimmy Mize, Mayor
City of Nacogdoches

ATTEST:

Approved as to form:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney



City Council Meeting

Date: May 17, 2022

Agenda Item: 3.B.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Administer Statement of Officer and Oath of Office for newly elected Council Members. (City Secretary)

SUMMARY/BACKGROUND: As stated in the Texas constitution, Article 16, Section 1, before an elected officer may assume duties of the office, the officer shall subscribe to the Statement of Officer and take the Oath of Office.

A draft of both the Statement and Oath are attached.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS: 1. Statement of Officer
2. Oath of Office

Form 2201 - Statement of Officer (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

Execution and Delivery Instructions

A Statement of Officer required to be filed with the Office of the Secretary of State is considered filed once it has been received by this office.

Mail: P.O. Box 12887, Austin, Texas 78711-2887.

Overnight mail or hand deliveries: James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

Fax: (512) 463-5569.

Email: Scanned copies of the executed Statement may be sent to register@sos.texas.gov

NOTE: The Statement of Officer form, commonly referred to as the “Anti-Bribery Statement,” must be executed and filed with the Office of the Secretary of State before taking the Oath of Office (Form 2204).

Commentary

Article XVI, section 1 of the Texas Constitution requires all elected or appointed state and local officers to take the official oath of office found in section 1(a) and to subscribe to the anti-bribery statement found in section 1(b) before entering upon the duties of their offices.

Elected and appointed state-level officers required to file the anti-bribery statement with the Office of the Secretary of State include members of the Legislature, the Secretary of State, and all other officers whose jurisdiction is coextensive with the boundaries of the state or who immediately belong to one of the three branches of state government. Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions. For more information, see Op. Tex. Att’y Gen. No. JC-0575 (2002) (determining the meaning of “state officer” as it is used in Article XVI).

Effective September 1, 2017, Senate Bill 1329, which was enacted by the 85th Legislature, Regular Session, amended chapter 602 of the Government Code to require the following judicial officers and judicial appointees to file their oath and statement of officer with the secretary of state:

Officers appointed by the supreme court, the court of criminal appeals, or the State Bar of Texas; and
Associate judges appointed under Subchapter B or C, Chapter 201, Family Code.

Local officers must retain the signed anti-bribery statement with the official records of the office. *As a general rule, city and county officials do not file their oath of office with the Secretary of State— these officials file at the local level. The Legislature amended the Texas Constitution, Article 16, Section 1, in November 2001 to no longer require local level elected officials to file with our office.* **The Office of the Secretary of State does NOT file Statements or Oaths from the following persons:** Assistant District Attorneys; City Officials, including City Clerks, City Council Members, Municipal Judges, Justices of the Peace, and Police/Peace Officers; Zoning/Planning Commission Members; County Officials, including County Clerks, County Commissioners, County Judges, County Tax Assessors, and District Clerks; and Officials of Regional Entities, such as, Appraisal Review Districts, Emergency Service Districts, and School Districts (ISD’s).

Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or register@sos.texas.gov

Revised 05/2020

Form #2201 Rev. 05/2020
Submit to:
SECRETARY OF STATE
Government Filings
Section P O Box 12887
Austin, TX 78711-2887
512-463-6334
512-463-5569 - Fax
Filing Fee: None



STATEMENT OF OFFICER

Statement

I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God.

Title of Position to Which Elected/Appointed: _____

Execution

Under penalties of perjury, I declare that I have read the foregoing statement and that the facts stated therein are true.

Date: _____

Signature of Officer

Print

Reset

Form 2204 - Oath of Office (General Information)

The attached form is designed to meet minimal constitutional filing requirements pursuant to the relevant provisions. *This form and the information provided are not substitutes for the advice and services of an attorney.*

Execution and Delivery Instructions

An Oath of Office that is required to be filed with the Office of the Secretary of State is considered filed once it has been received by this office. The Oath of Office may be administered to you by a person authorized under the provisions of Chapter 602 of the Texas Government Code. Authorized persons commonly used to administer oaths include notaries public and judges.

Mail: P.O. Box 12887, Austin, Texas 78711-2887.

Overnight mail or hand deliveries: James Earl Rudder Officer Building, 1019 Brazos, Austin, Texas 78701.

Fax: (512) 463-5569. If faxed, the original Oath should also be mailed to the appropriate address above.

Email: Scanned copies of the executed Oath may be sent to register@sos.texas.gov. If sent by email, the original Oath should also be mailed to the appropriate address above.

NOTE: *Do not have the Oath of Office administered to you before executing and filing the Statement of Officer (Form 2201 – commonly referred to as the “Anti-Bribery Statement”) with the Office of the Secretary of State.*

Commentary

Pursuant to art. XVI, Section 1 of the Texas Constitution, the Oath of Office *may not* be taken until a Statement of Officer (see Form 2201) has been subscribed to and, as required, filed with the Office of the Secretary of State. Additionally, gubernatorial appointees who are appointed during a legislative session *may not* execute their Oath until after confirmation by the Senate. Tex. Const. art. IV, Section 12.

Officers Required to File Oath of Office with the Secretary of State:

Gubernatorial appointees

District attorneys

Appellate and district court judges

Officers appointed by the supreme court, the court of criminal appeals, or the State Bar of Texas

Associate judges appointed under subchapter B or C, chapter 201 of the Texas Family Code

Directors of districts operating pursuant to chapter 36 or 49 of the Texas Water Code file a duplicate original of their Oath of Office within 10 days of its execution. Texas Water Code, Sections 36.055(d) and 49.055(d)

Officers Not Required to File Oath of Office with the Secretary of State:

Members of the Legislature elected to a *regular* term of office will have their Oath of Office administered in chambers on the opening day of the session and recorded in the appropriate Journal. Members elected to an *unexpired* term of office should file their Oath of Office with either the Chief Clerk of the House or the Secretary of the Senate, as appropriate.

All other persons should file their Oaths locally. Please check with the county clerk, city secretary or board/commission secretary for the proper filing location.

As a general rule, city and county officials do not file their oath of office with the Secretary of State—these officials file at the local level. The Legislature amended the Texas Constitution, Article 16, Section 1, in November 2001 to no longer require local level elected officials to file with our office.

The Office of the Secretary of State does NOT file Statements or Oaths from the following persons: Assistant District Attorneys; City Officials, including City Clerks, City Council Members, Municipal Judges, Justices of the Peace, and Police/Peace Officers; Zoning/Planning Commission Members; County Officials, including County Clerks, County Commissioners, County Judges (*except County Court of Law Judges who file with the Elections Division*), County Tax Assessors, and District Clerks; and Officials of Regional Entities, such as, Appraisal Review Districts, Emergency Service Districts, and School Districts (ISD's). Questions about whether a particular officer is a state-level officer may be resolved by consulting relevant statutes, constitutional provisions, judicial decisions, and attorney general opinions.

All state or county officers, other than the governor, lieutenant governor, and members of the legislature, who qualify for office, are commissioned by the governor. Tex. Gov't Code, Section 601.005. The Secretary of State performs ministerial duties to administer the commissions issued by the governor, including confirming that officers are qualified prior to being commissioned. Submission of this oath of office to the Office of the Secretary of State confirms an officer's qualification so that the commission may be issued.

Questions about this form should be directed to the Government Filings Section at (512) 463-6334 or register@sos.texas.gov.

Revised 9/2017

Submit to:
SECRETARY OF STATE
Government Filings Section
P O Box 12887
Austin, TX 78711-2887
512-463-6334
FAX 512-463-5569
Filing Fee: None



OATH OF OFFICE

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS,
I, _____, do solemnly swear (or affirm), that I will faithfully
execute the duties of the office of _____ of
the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws
of the United States and of this State, so help me God.

Signature of Officer

Certification of Person Authorized to Administer Oath

State of _____

County of _____

Sworn to and subscribed before me on this _____ day of _____, 20____.

(Affix Notary Seal,
only if oath
administered by a
notary.)

Signature of Notary Public or
Signature of Other Person Authorized to Administer An
Oath

Printed or Typed Name

Print

Reset



City Council Meeting

Date: May 17, 2022

Agenda Item: 6.A.

PRESENTER: Jan Vinson, City Secretary

ITEM/SUBJECT: Consider approval of minutes from May 3, 2022 regular meeting. (City Secretary)

SUMMARY/BACKGROUND:

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Jan Vinson, City Secretary
vinsonj@nactx.us
936-559-2506

ATTACHMENTS: 1. Minutes



Regular Session
Nacogdoches City Council
May 3, 2022 – 4:30 p.m.
City Council Room – City Hall
202 East Pilar Street

City Council present in person: Mayor Jimmy Mize, Council Members Kathleen Belanger, Roy Boldon, Amelia Fischer and Jay Anderson.

1. Called to order at 4:30 p.m.
2. Pledge of Allegiance.
3. WORK SESSION:
 - A. Receive a presentation and hold a discussion regarding new Planning and Zoning policy changes regarding zoning applications and meetings.

Alaina Helton, City Planner, discussed several new policies implemented last year. The Planning and Zoning Commission asked City staff to look at policy changes which will allow for more collaboration in the early stages of the zone change process. Proposed changes pertaining to Specific Use Permits, Planned Development and certain zone changes are pre-application meetings, neighborhood meetings and additional Planning and Zoning Commission meetings when needed.

Ken Deppisch, Planning and Zoning Commission Chair, stated the changes were unanimously supported by the Planning and Zoning Commission. He also said the Planning and Zoning Commission wanted to be responsive to the community.

City Council discussed neighborhood meetings, zoning applications, zone change process and applicant rights/privilege.

- B. Receive a presentation, hold a discussion and give staff direction regarding amendments to Chapters 18, 74 and 86 of the Code of Ordinances to update and consolidate alcohol regulations.

Brian Bray, Community Services Director, discussed current ordinances pertaining to consumption and sale of alcohol in public facilities and the proposed ordinance amendments. The City's Code of Ordinances that reference the sale and consumption of alcoholic beverages has not kept pace with the legislature and regulatory changes, and is inconsistent and/or preempted by state regulations.

Council Member Boldon stated that he supports the changes except that he is adamantly opposed to alcohol being served during events at Zion Hill Church. He stated that Zion Hill Church is a sacred location.

Council Member Belanger agreed that Zion Hill Church should not allow alcohol. She also stated there is a lot of discretion in the proposed ordinance changes. She asked that information be given to City Council sooner and it would be helpful to have a community discussion regarding this policy.

Steven Kirkland, City Attorney, stated the ordinance currently in place is not enforceable because it does not comply with Texas Alcoholic Beverage Commission (TABC) regulations.

4. Matt Moore spoke during open forum thanking City Council for respecting the planning process by not passing a rezoning request several weeks ago. Brad Maule also spoke during open forum asking why the public is not invited to the neighborhood meetings regarding zone change requests. Staff stated the neighborhood meetings are posted as public meeting and assured Mr. Maule that all citizens are welcome to attend.

5. RECOGNITION
 - A. Mayor Mize read a proclamation recognizing April 29, 2022 as Mayor's Monarch Pledge Day.

6. No items removed from Consent Agenda.

7. **CONSENT AGENDA:** Items included under Consent Agenda require little or no deliberation by Council. Approval of Consent Agenda authorizes the City Manager or his designee to proceed with conclusion of each in accordance with staff recommendations as reflected in the minutes of this meeting.

- A. Consider approval of minutes for April 19, 2022 regular meeting.
- B. Quarterly Investment Report for Quarter ended March 31, 2022.
- C. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Nacogdoches ISD Police Department for the provision of law enforcement during an emergency.
- D. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of Center for the provision of law enforcement during an emergency.
- E. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the Houston County for the provision of law enforcement during an emergency.
- F. Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and Cherokee County for the provision of law enforcement during an emergency.
- G. Consider approval of a contract with Advanced Roofing Services, Inc. for the replacement of the Sunset Cemetery Mausoleum roof in the amount of \$55,073.

Council Member Jay Anderson moved approval; motion duly seconded by Council Member Kathleen Belanger and carried by unanimous vote.

8. REGULAR AGENDA:

- A. Consider approval of Resolution No.1300-05-22 amending a Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport.

Larissa Philpot, Economic Development Director, reviewed the timeline of activities regarding the Chapter 380 agreement with HCH Aviation, LLC. HCH Aviation recently bid the paving portion of this project which is over budget. HCH Aviation is asking that City Council reallocate the \$12,000 not spent on the water line and electrical line to the driveway and parking item. They also asked for an additional \$22,649.20 to be added to the driveway and parking item.

Jon Hughes with HCH Aviation, LLC discussed the growth of the flight school and construction projects.

Council Member Amelia Fischer moved approval; motion duly seconded by Council Member Roy Boldon and carried by unanimous vote.

- B. Consider adoption of a budget amendment in the amount of \$610,835 for the amended Chapter 380 Economic Development Program agreement by and between the City of Nacogdoches and HCH Aviation, LLC regarding development of a flight school at A.L. Mangham, Jr. Regional Airport.

Larissa Philpot, Economic Development Director, stated this budget amendment should have been presented with the original Chapter 380 agreement and it does reflect the changes to date.

Council Member Amelia Fischer moved approval; motion duly seconded by Council Member Roy Boldon and carried by unanimous vote.

- C. Receive mid-year financial update.

Pam Curbow, Finance Director, reviewed the City's finances as of March 1, 2022. She discussed revenues and expenditures of the General Fund, Sanitation Fund and Utility Fund. Ms. Curbow stated that all funds are where we expect them to be half way through the fiscal year.

- D. Receive an update on Customer Service Inspections for commercial entities and back flow preventer testing and installations.

Steve Bartlett, Public Works Director, reviewed the requirements by Texas Commission on Environmental Quality (TCEQ) regarding Customer Service Inspections. The City has contracted with firms that are conducting Customer Service Inspections across the City for all commercial water customers. Mr. Bartlett discussed the City's process in identifying customers who need additional backflow preventers, noncompliance, City Ordinances, testing notification process and suggested actions.

City Council discussed outsourcing or conducting Customer Service Inspections in-house, TCEQ regulations and fines, communication issues and testing results.

City Council asked staff to draft a process by which City staff may be certified to do back flow testing in-house and one where the City would outsourcing said testing. This process would including cost for hiring staff to do the testing versus outsourcing the testing. City Council also asked staff to look at creating a taskforce that would devise a plan to simplify the process.

- E. Consider adoption of an ordinance amending Chapter 18, 74 and 86 of the City of Nacogdoches Code of Ordinances to update and consolidate alcohol regulations.

Brian Bray, Community Services Director, stated that approval of this ordinance will amend Chapters 18, 74 and 86 of the Code of Ordinances as stated in Work Session Item 3 B. These amendments will bring our ordinances in line with Texas Alcoholic Beverage Commission regulations.

Council Member Jay Anderson moved approval; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

- F. Consider a contract amendment to extend the current electricity retail sales agreement with Texas General Land Office (GLO) for a period to expire on December 31, 2023.

Pam Curbow, Finance Director, stated that the City of Nacogdoches entered into a retail sales agreement for the purchase of electricity with the Texas General Land Office (GLO) in January, 2014. This agreement afforded the City the benefit of waived Gross Receipts Taxes on all electric accounts. Legislation was passed in 2019 that removed municipalities from the exemption as of December, 31, 2023.

As of 2 p.m. the actual effective electricity rate was 9.559 cents per kWh which will likely change before the agreement is signed. If approved, the contract rate will be extended from June 1, 2022 thru December 31, 2023.

Margaret Somereve, Executive Director for Texas Coalition for Affordable Power, spoke during public comment discussing the volatility of the energy market. She also said that the best option for the City right now is to extend the contract with Texas General Land Office.

Council Member Roy Boldon moved approval; motion duly seconded by Council Member Jay Anderson and carried by unanimous vote.

- G. Consider a resolution(s) to rejoin the Texas Coalition for Affordable Power (TCAP) for the procurement of electric services and to authorize the City Manager to execute any associated agreements.

City Council approved Item F therefore no action taken on this item.

- H. Consider resolution(s) to participate in a Purchasing Cooperative offered by the Region 15 Education Service Center for the procurement of electric services and to authorize the City Manager to execute any associated agreements.

City Council approved Item F therefore no action taken on this item.

City Council went into Executive Session at 6:59 p.m.

9. **EXECUTIVE SESSION:**

- A. Deliberation regarding Economic Development negotiations under Government Code Section 551.087 as follows:
 - 1. Discuss or deliberate regarding commercial or financial information the governmental body has received from business prospects that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and with which the governmental body is conducting economic development negotiations; and
 - 2. Deliberate the offer of financial or other incentives to business prospects described by Subdivision 1 above.
- B. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the employment of a public officer or employee.
- C. Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding duties of a public officer or employee. The subject of this Executive Session is to discuss the annual evaluation and extension of the City Attorney's contract.

10. City Council reconvened in open session at 8: 23 p.m. with the following action:

9. A. No action taken.

9. B. Mayor Mize made a motion authorizing the City Manager to negotiate a separation agreement between the City of Nacogdoches and the Nacogdoches Police Chief; motion duly seconded by Council Member Belanger and carried by unanimous vote.

9. C. Council Member Jay Anderson made a motion to amend the City Attorney’s contract extension to reflect an increase in accrued vacation leave to 7.6924 hours per pay period starting on April 10, 2022; motion duly seconded by Council Member Amelia Fischer and carried by unanimous vote.

10. Adjourned 8:25 p.m.

ATTEST:

Mayor Jimmy Mize
City Council
City of Nacogdoches

Jan Vinson, City Secretary

PRESENTER: Pam Curbow, Finance Director

ITEM/SUBJECT: Consider approval of a resolution to rejoin the Texas Coalition for Affordable Power (TCAP) for the procurement of future electric services and to authorize the City Manager to execute any associated agreements. (Director of Finance)

SUMMARY/BACKGROUND: With the deregulation of the electric market in 2001, the City of Nacogdoches joined the Cities Aggregation Power Project (CAPP) which later became the Texas Coalition for Affordable Power (TCAP) for the procurement of electricity. In 2013 the City was approached with the opportunity to move the electric contract to a state power program to realize additional savings. The City then entered into a retail sales agreement for the purchase of electricity with the Texas General Land Office (GLO) in January, 2014. This agreement afforded the City the benefit of waived Gross Receipts Taxes on all electric accounts.

Legislation was passed in 2019 that removed municipalities from the exemption as of December, 31, 2023. We are able to retain these savings until that date through the extension of our current agreement. Since the City can no longer participate in the State Power Program we must change providers. TCAP has provided an opportunity for the City to re-join them to procure future electric services. Since our current electric contract will expire on December 31, 2023, joining TCAP now will allow them to go out into the market to secure our electric needs for calendar year 2024.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Pamela Curbow, Director of Finance
curbowp@nactx.us
936-559-2526

ATTACHMENTS:

1. Resolution
2. Certificate of Filing and Bylaws
3. TCAP PSA
4. Service Agreement
5. PowerPoint Presentation

RESOLUTION NO. 1302-05-22

A RESOLUTION OF THE CITY OF NACOGDOCHES APPROVING THE CERTIFICATE OF FORMATION AND BYLAWS OF TEXAS COALITION FOR AFFORDABLE POWER (“TCAP”), A POLITICAL SUBDIVISION CORPORATION; ACCEPTING MEMBERSHIP IN SAID CORPORATION; APPROVING THE PROFESSIONAL SERVICES AGREEMENT; AND COMMITTING TO BUDGET FOR ENERGY PURCHASES AND TO HONOR THE CITY’S COMMITMENTS TO PURCHASE POWER FOR ITS ELECTRICAL NEEDS THROUGH TCAP AND ADOPTING TCAP’S GEXA ENERGY’S COMMERCIAL ELECTRIC SERVICE AGREEMENT FOR POWER TO BE PROVIDED ON AND AFTER JANUARY 1, 2024

WHEREAS, Chapter 304 of the Texas Local Government Code, entitled Energy Aggregation Measures for Local Governments, allows political subdivisions to form a political subdivision corporation to act as an agent to negotiate the purchase of electricity, or to likewise aid or act on behalf of the political subdivisions for which the corporation is created, with respect to their own electricity use for their respective public facilities; and

WHEREAS, Texas Coalition for Affordable Power (“TCAP”) is a political subdivision corporation organized under said Chapter; and

WHEREAS, more than one hundred-sixty (160) cities and other political subdivisions have joined TCAP since the Texas electric retail market was deregulated January 1, 2002; and

WHEREAS, TCAP members work collaboratively with the assistance of attorneys and procurements experts hired by TCAP to negotiate lower cost, reliable electric power with price stability; and

WHEREAS, the negotiation for electricity by the corporation should result in lower, more stable electricity costs to the City of Nacogdoches; and

WHEREAS, the City of Nacogdoches seeks to become a Member of TCAP; and

WHEREAS, TCAP has prepared a Professional Services Agreement (“PSA”), attached as Exhibit C, that, in addition to enumerating services and benefits to members of TCAP, provides TCAP with specific authority to procure power in the wholesale market on behalf of members.

WHEREAS, TCAP has designed a new procurement strategy that will involve TCAP initially committing to purchase power two years in advance of delivery on behalf of its members who desire participation in a Strategic Hedging Program (“SHP”) that will involve a series of monthly competitive auctions; and

WHEREAS, the CESA that will facilitate participation in the SHP effective for power deliveries in and beyond 2023 (attached as Exhibit D)

NOW THEREFORE, BE IT RESOLVED BY THE CITY OF NACOGDOCHES.

Section 1. The recitals contained in the preamble of this Resolution are determined to be true and correct and are hereby adopted as a part of this Resolution.

Section 2. The Certificate of Formation and Bylaws of TCAP, a political subdivision corporation, attached hereto and incorporated herein for all purposes as Exhibits A and B respectively, are hereby approved.

Section 3. The City of Nacogdoches accepts Membership in TCAP.

Section 4. That the City Manager is authorized to sign TCAP’s Professional Services Agreement.(Exhibit C) and Gexa Energy’s Commercial Service Electricity Agreement (CESA) (Exhibit D)

Section 5. The City will commit to purchase power to meet all of its electricity needs eligible for

competition pursuant to the TCAP approved supply agreement and approve funds necessary to pay electricity costs proportionate to the City's load under the supply agreement (whether wholesale or retail) arranged by TCAP and signed by TCAP's Executive Director or President or other TCAP representatives authorized by the TCAP Board.

Section 6. All Resolutions and parts thereof in conflict herewith are hereby expressly repealed insofar as they conflict herewith.

Section 7. That if any one or more sections or clauses of this Resolution is adjudged to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution and the remaining provisions of the Resolution shall be interpreted as if the offending section or clause never existed.

Section 8. This Resolution shall take effect immediately from and after its adoption and it is accordingly so resolved.

Section 9. A copy of this Resolution along with the Professional Services Agreement and Gexa Energy's CESA shall be sent to TCAP, 15455 Dallas Parkway, Suite 600, Addison, Texas 75001.

PASSED AND APPROVED this 17th day of May, 2022.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

Jan Vinson, City Secretary

Steven Kirkland, City Attorney

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697

Hope Andrade
Secretary of State



Office of the Secretary of State

CERTIFICATE OF FILING OF

Texas Coalition for Affordable Power
File Number: 801327832

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 10/05/2010

Effective: 10/05/2010



A handwritten signature in cursive script, appearing to read "Hope Andrade".

Hope Andrade
Secretary of State

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: Linda Gemuenden

Fax: (512) 463-5709
TID: 10306

Dial: 7-1-1 for Relay Services
Document: 332951110002



Office of the Secretary of State

October 07, 2010

Attn: Cathleen C. Slack

Lloyd Gosselink, Attorneys at Law
816 Congress Avenue, Ste. 1900
Austin, TX 78701 USA

RE: Texas Coalition for Affordable Power
File Number: 801327832

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://window.state.tx.us/taxinfo/exempt/index.html>. Information on exemption from federal taxes is available from the Internal Revenue Service web site at www.irs.gov.

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation. If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555
Enclosure

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555

Fax: (512) 463-5709

Dial: 7-1-1 for Relay Services

Prepared by: Linda Gemuenden

TID: 10286

Document: 332951110002

Form 202
(Revised 12/09)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: \$25



Certificate of Formation
Nonprofit Corporation

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas

OCT 05 2010

Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Texas Coalition for Affordable Power

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Geoffrey	M	Gay	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

816 Congress Avenue, Suite 1900	Austin	TX	78701
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3 – Management

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

A minimum of three directors is required.

Director 1				
Jay		Doegey		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
101 South Mesquite St., Suite 300	Arlington	TX	76010	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 2				
Tom	J.	Blazek		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
622 E. Market Street	Rockport	TX	78382	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Randy		Moravec		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
5350 Belt Line Road	Addison	TX	75254-7606	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

☐ The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

☒ A. The nonprofit corporation shall have members.

☐ B. The nonprofit corporation will have no members.

Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:

any and all lawful business for which non-profit corporations may be organized under the Texas Business Organizations Code; purchasing electricity; aiding or acting on behalf of its Members with respect to their own electricity use for their respective public facilities and that of their citizens; negotiating on behalf of its Members for the purchase of electricity; making contracts for the purchase of electricity; and taking any other actions necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the Corporation; acting as a local cooperative organization to purchase goods and services for its Members; and for all other purposes as may be permitted by law for political subdivision corporations.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

Supplemental Provisions/Information
(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

Organizer

The name and address of the organizer:

Cathleen C. Slack

Name

816 Congress Avenue, Suite 1900

Austin

TX

78701

Street or Mailing Address

City

State

Zip Code

Effectiveness of Filing (Select either A, B, or C.)

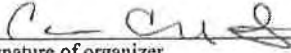
- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: October 4, 2010


Signature of organizer

Cayleen C. Slack
Printed or typed name of organizer

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Hope Andrade
Secretary of State

Office of the Secretary of State
Packing Slip

October 7, 2010
Page 1 of 1

Attn: Cathleen C. Slack
Lloyd Gosselink, Attorneys at Law
816 Congress Avenue
Ste. 1900
Austin, TX 78701

Batch Number: 33295111

Batch Date: 10-05-2010

Client ID: 137735016

Return Method: Mail

Phone No: 5123225800

Document Number	Document Detail	Filing Number / Name	Page Count	Fee
332951110002	Certificate of Formation	Texas Coalition for Affordable Power	0	\$25.00
Total Document Fees				\$25.00

Payment Type	Payment Status	Payment Reference	Amount
Check	Received	15200	\$25.00
Total Payments Received			\$25.00
Total Amount Charged to Client Account			\$0.00
Total Amount Credited to Client Account			\$0.00

Note: This is not a bill. Please do not send any payments until the monthly statement is received.
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AMENDED AND RESTATED
BYLAWS OF
TEXAS COALITION FOR AFFORDABLE POWER

WHEREAS, Texas Coalition for Affordable Power is organized pursuant to these Bylaws and to that certain Certificate of Formation filed with the Secretary of State on October 4, 2010; and

WHEREAS, South Texas Aggregation Project, Inc., a Texas non-profit corporation, and Cities Aggregation Power Project, Inc., a Texas non-profit corporation, anticipates merger with Texas Coalition for Affordable Power in accordance with that certain Certificate of Merger of Non-Profit Corporation (the “**Certificate**”) to be filed with the Secretary of State of Texas in December 2010, to be effective January 1, 2011, and according to that certain plan of merger attached thereto (the “**Merger**”); and

WHEREAS, South Texas Aggregation Project, Inc. and Cities Aggregation Power Project, Inc., desire to participate in elections in the fall of 2010 for Board of Director positions for Texas Coalition for Affordable Power, which positions shall be in effect January 1, 2011; and

WHEREAS, Texas Coalition for Affordable Power desires to modify a provision relating to the election of Directors and otherwise ratify and affirm these Bylaws.

ARTICLE ONE

NAME, PURPOSES, POWERS AND OFFICES

Section 1.1. Name. The name of this corporation (the “**Corporation**”) is Texas Coalition for Affordable Power.

Section 1.2. Purposes. The Corporation has been organized for any and all lawful business for which nonprofit corporations may be organized under the Texas Business Organizations Code (the “**Code**”), for the purposes of purchasing electricity, aiding or acting on behalf of its Members (as hereinafter defined) with respect to their own electricity use for their respective public facilities and that of their citizens, negotiating on behalf of its Members for the purchase of electricity, making contracts for the purchase of electricity, and taking any other actions necessary to purchase electricity for use in the public facilities of the political subdivision or subdivisions represented by the Corporation, for the purposes of acting as a local cooperative organization to purchase goods and services for its Members, and for all other purposes as may be permitted by law for political subdivision corporations.

Section 1.3. Powers. The Corporation is a nonprofit corporation and shall have all of the powers, duties, authorizations and responsibilities as provided in the Code; provided, however, the Corporation shall neither have nor exercise any power, nor engage directly or indirectly in any activity, that would invalidate its status as a corporation that is exempt from federal income tax as an organization described in Section 501(c)(6) of the Internal Revenue Code (2010).

Section 1.4. Offices. The Corporation may have, in addition to its registered office, offices at such places, both within and without the State of Texas, as the Board of Directors may from time to time determine or as the activities of the Corporation may require.

ARTICLE TWO

MEMBERS OF THE CORPORATION

Section 2.1. Members. A “**Member**” of the Corporation shall be a political subdivision of the State of Texas that passes a resolution by its governing body that accepts the Certificate of Formation and Bylaws of the Corporation and contracts for energy through the Corporation. Members will be ranked by annual power usage based on the previous calendar year. A “**Large Member**” shall be the top 10% of members based on annual power usage. A “**Medium Member**” shall be the next 20% of Members after the large members based on annual power usage. A “**Small Member**” shall be Members who are the remaining 70% of membership after large and medium members. Members will be defined on a bi-annual basis in even years, prior to elections based on the previous year’s annual usage.

Section 2.2. Associate Members. The Corporation may have associate members. An “**Associate Member**” is a political subdivision of the State of Texas whose governing body resolves to support the advocacy efforts of the Corporation, and pays annual dues that may be set from time to time by the Board of Directors (“**Associate Member Dues**”), but is not served under a power contract to which the Corporation is a party. Associate Members shall **not** have the right to vote on any matters of business of the Corporation, including, but not limited to, those voting rights described in Article 3 herein. The Board may, at its sole discretion, require a reinstatement fee of any Associate Member who desires to become a Member.

Section 2.3. Suspended Members. Any Member or Associate Member who is not currently served under a power contract to which the Corporation is a party shall have its membership in the Corporation suspended and shall be considered a “**Suspended Member**”.

Section 2.4. Withdrawal of Member. Any Member or Associate Member may withdraw from participation in the activities of the Corporation at any time upon thirty (30) days prior written notice to the Board of Directors, whereupon it shall cease to be a Member or Associate Member, and shall cease to be entitled or obligated to participate in the activities of all committees of the Board of Directors and shall have no further obligations as a Member; provided, however, that if such notice is given more than thirty (30) days after such Members receipt of its statement of annual dues, fees and expenses for a fiscal year, the Member or Associate Member shall be obligated to pay for the full fiscal year within which such termination is effective. Withdrawal of membership shall have no effect on power agreements to which the withdrawing entity may be contractually obligated, including, but not limited to, the payment of the Corporation’s Aggregation Fees for the duration of the then-current electric contract.

ARTICLE THREE

BOARD OF DIRECTORS

Section 3.1. General Powers; Delegation. The activities, property and affairs of the Corporation shall be managed by its Board of Directors, who may exercise all such powers of the Corporation and do all such lawful acts and things as are permitted by statute, by the Certificate of Formation or by these Bylaws. By illustration and without limitation, included among the powers of the Board of Directors is the power to negotiate the purchase of electricity, aid or act on behalf of the political subdivisions for which the corporation is created, make contracts for the purchase of electricity, purchase electricity, and take any other action necessary to purchase electricity for use in the public facilities or by the citizens of the political subdivision or subdivisions represented by the Corporation; provided, however, no Member shall be obligated under any such contract unless the Member approves such contract.

Section 3.2. Number and Qualifications. The Board of Directors shall initially consist of fifteen (15) Directors as more particularly described in Section 3.3 herein. The Board of Directors may increase or decrease the number of Directors by a resolution of the Board, however no such resolution shall have the effect of shortening or terminating the term of a current Director. Any full-time salaried employee or elected official of a Member shall be eligible to serve as a Director. Any Director who (a) ceases to be an official or full-time salaried employee of a Member; or (b) is an official of full-time salaried employee of a political subdivision who ceases to be a Member of the Corporation, or who refuses to extend a contract authorized by the Board of Directors or who otherwise expresses a desire to exit the corporation shall immediately become disqualified to serve as a Director and shall vacate such position. Such vacancy shall be filled according to Section 3.4 herein

Section 3.3. Election and Term of Office. The Directors of the Corporation shall be selected from nominations by the Members according to the provisions of this Section 3.3. No more than one (1) nominee may be nominated by each Member. The Members shall elect six (6) Directors from nominees of Large Members (Board Positions 1-6), three (3) Directors from nominees of Medium Members (Board Positions 7-9), and two (2) Directors from nominees of Small Members (Board Positions 10-11). The remaining four (4) Directors shall be those nominees who received the greatest number of votes but were not otherwise elected (Board positions 12-15). Notwithstanding the foregoing, it is the intent of the Members that each ERCOT Zone is represented by at least one (1) Director. To that end, for example, if one ERCOT Zone is not represented by a Director after elections have proceeded according to the above provisions, then the highest numbered Board Position to be elected (*e.g.*, Board Position 15) shall go to the nominee from such unrepresented ERCOT Zone instead of the nominee who otherwise would have been elected to such Board Position. Directors shall hold office for staggered two (2) year terms and until such Director's successor is chosen and qualified, or until such Director's earlier death, resignation, retirement, disqualification or removal from office. Directors may serve any number of consecutive terms. Board positions 1, 3, 5, 7, 9, 11, 13, and 15 will be selected in odd-numbered years. Board positions 2, 4, 6, 8, 10, 12 and 14 will be selected in even-numbered years. The terms 'odd' and 'even' shall apply to the year in which such Director's term of office begins. In order to stagger the terms of office, if the initial terms of office of all Directors begin in 2011, for example, then the initial term of office for odd numbered Board Positions will be two (2) years and the initial term of office for even numbered

Board Positions will be one (1) year. At the Annual Meeting every three (3) years, the Board shall consider whether to adopt term limits.

Section 3.4. Filling of Vacancies. Any vacancy occurring in the Board of Directors resulting from the death, resignation, retirement, disqualification or removal from office of any Director or as the result of an increase in the number of Directors may be filled by the Board. Any Director appointed to fill a vacancy shall hold office until the expiration of the term of the vacating Director.

Section 3.5. Removal. Any Director absent for any two (2) meetings of the Board in a twelve (12) month period shall be automatically removed from the Board subject to the discretion of a majority vote by the Board to exclude an absence from the twelve (12) month period. Directors may be removed from office, with or without cause, by a majority vote of Directors in attendance at a meeting of the Board of Directors, but only so long as written notice that such action shall be considered is provided sixty (60) days prior to such meeting to each Director by the President or Secretary of the Board of Directors. If any Director shall violate any of the terms of Article 11 herein, such Director may be immediately removed by a majority vote of the Board.

Section 3.6. Place of Meeting. Meetings of the Board of Directors shall be held at such places, within or without the State of Texas, as may from time to time be fixed by the Board of Directors or as shall be specified or fixed in the respective notices or waivers of notice thereof.

Section 3.7. Annual Meetings. Beginning in 2011, an annual meeting of the Board of Directors (the “**Annual Board Meeting**”) shall be held in conjunction with the Annual Meeting of the Membership (“**Annual Membership Meeting**”) the first week in January (or at such other time that the Board determines to be advisable) of each year in Austin, Texas (or at such other location as the Board determines to be advisable), at such time as the Directors shall determine. At such Annual Membership Meeting, each Member shall be entitled to vote in the election of Directors and upon such other matters as may come before the Annual Membership Meeting. A quorum for the election of Directors at the Annual Membership Meeting shall be considered achieved if at least twenty percent (20%) of the total voting-eligible Members are present in person or have submitted a vote by mail, email or facsimile ballot. At the Annual Board Meeting, the Directors shall recognize new members of the Board of Directors of the Corporation in accordance with the requirements of Sections 3.2-3.5 of these Bylaws, shall elect officers, and shall transact any and all other business as may properly come before the meeting. Written or printed notice stating the place, day and hour of each Annual Membership Meeting and Annual Board Meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of such meeting to each Member and Director entitled to vote at such meetings, respectively.

Section 3.8. Regular Meetings. Regular meetings of the Board of Directors shall be held at such times and places as may be fixed from time to time by resolution adopted by the Board and communicated by notice to all Directors. The Board shall choose a location most convenient to the Directors which shall minimize travel expenses that may be reimbursed to Directors required to travel. Except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation, or by these Bylaws, any and all business may be transacted at any regular meeting.

Section 3.9. Special Meetings. Special meetings of the Board of Directors may be called by the President upon not less than one (1) nor more than sixty (60) days notice to each Director. Special meetings shall be called by the President or Secretary in like manner and on like notice on the written request of two (2) or more Directors. Except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 3.10. Quorum and Manner of Acting. At all meetings of the Board of Directors the presence of a majority of the number of Directors then in office shall be necessary and sufficient to constitute a quorum for the transaction of business, except as otherwise provided by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws. The act of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board of Directors unless the act of a greater number is required by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, in which case the act of such greater number shall be requisite to constitute the act of the Board. If a quorum shall not be present at any meeting of the Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. At any such adjourned meeting at which a quorum shall later be present, any business may be transacted which might have been transacted at the meeting as originally convened.

Section 3.11. No Compensation. Directors shall not receive any compensation for their services as Directors or as members of a standing or special committee of the Board, but may receive reimbursement for expenses incurred on behalf of the Corporation or in attending meetings of the Board of Directors (if, and to the extent, authorized by a resolution adopted by the Directors) and may receive compensation for serving the Corporation in any other capacity (if, and to the extent, authorized by a resolution adopted by the Directors).

Section 3.12. Telephone Meetings. Subject to the provisions of applicable law and these Bylaws regarding notice of meetings, members of the Board of Directors or members of any committee designated by such Board may, unless otherwise restricted by statute, by the Certificate of Merger of Non-Profit Corporation or by these Bylaws, participate in and hold a meeting of such Board of Directors or committee by using conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other or read the written text of each other's communication (e.g. email communications), and participation in a meeting pursuant to Section 3.10 shall constitute presence in person at such meeting, except when a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened. Annual Membership Meetings may be similarly conducted.

ARTICLE FOUR

COMMITTEES AND ADVISORY BOARDS

Section 4.1. Executive Committee of Board of Directors. The President of the Board of Directors may appoint an Executive Committee made up of Directors. Such Executive Committee shall have and exercise the authority of the Board of Directors in the management of

the Corporation to the extent permitted by resolution adopted by a majority of the Directors in office.

Section 4.2. Advisory Boards or Committees. The President of the Board of Directors may designate one or more advisory boards or committees not having and exercising the authority, responsibility, or duties of the Board of Directors in the management of the Corporation. A Director must serve as the Chair, Co-Chair, or Vice Chair of any committees designated, but committee membership may be made up of employees or officials of Members and Associate Members. The President shall appoint the members of such advisory boards or committees. Any member thereof may be removed by the President whenever in the President's judgment the best interests of the Corporation shall be served by such removal.

Section 4.3. Term of Office. Each member of an advisory board or committee shall continue as such until the next annual meeting of the directors of the Corporation and until such member's successor is appointed or elected, unless the board or committee is sooner terminated, or unless such member is removed from such board or committee or shall cease to qualify as a member thereof.

Section 4.4. Chairman. Unless otherwise designated by these Bylaws, one or more members of each advisory board or committee shall be appointed chairman, or co-chairman of such committee, by the President of the Board of Directors.

Section 4.5. Vacancies. Vacancies in the membership of any advisory board or committee may be filled by appointments made in the same manner as provided in the case of the original appointments or elections.

Section 4.6. Quorum; Manner of Acting. Unless otherwise provided in the resolution of the Board of Directors designating an advisory board or committee, a majority of the whole board or committee shall constitute a quorum, and the act of the majority of the members present at a meeting at which a quorum is present shall be the act of the board or committee.

Section 4.7. Rules. Each committee of directors, or advisory board or committee, may adopt rules for its own government not inconsistent with these Bylaws or with rules adopted by the Board of Directors.

ARTICLE FIVE

NOTICES

Section 5.1. Manner of Giving Notice. Whenever, under the provisions of any statute, the Certificate of Merger of Non-Profit Corporation or these Bylaws, notice is required to be given to any Director, advisory board member or committee member of the Corporation, and no provision is made as to how such notice shall be given, it shall not be construed to require personal notice, but any such notice may be given in writing by hand delivery, by facsimile transmission, by electronic mail or other form of electronic communication if permitted by the Code, or by mail, postage prepaid, addressed to such director or advisory board member or committee member at such person's address as it appears on the records of the Corporation. Any notice required or permitted to be given by mail shall be deemed to be delivered at the time when

the same shall be thus deposited in the United States mails, as aforesaid. Any notice required or permitted to be given by facsimile transmission or electronic mail or other form of electronic communication shall be deemed to be given upon successful transmission of such facsimile or electronic mail or other form of electronic communication.

Section 5.2. Waiver of Notice. Whenever any notice is required to be given to any Director or advisory board member or committee member of the Corporation under the provisions of any statute, the Certificate of Merger of Non-Profit Corporation or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE SIX

OFFICERS, EMPLOYEES AND AGENTS: POWERS AND DUTIES

Section 6.1. Elected Officers. The elected officers of the Corporation shall include a President, a Vice President, a Secretary and a Treasurer. So far as is practicable, all elected officers shall be elected by the Board of Directors at each Annual Board Meeting. The Board of Directors shall elect from among the Directors a President and Vice President. The Secretary and Treasurer need not be a Director.

Section 6.2. Appointive Officers. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and assistant officers and agents as it shall from time to time deem necessary, who shall exercise such powers and perform such duties as shall be set forth in these Bylaws or determined from time to time by the Board.

Section 6.3. Two or More Offices. Any two (2) or more offices may be held by the same person, except that the President and Secretary shall not be the same person.

Section 6.4. Compensation. The compensation, if any, of all officers of the Corporation shall be fixed from time to time by the Board of Directors. The Board of Directors may from time to time delegate to the President the authority to fix the compensation of any or all of the other employees and agents of the Corporation. Any officer of the Corporation who receives compensation for his or her services in such capacity shall abstain from all discussions and voting with respect to the amount or any other aspect of such compensation.

Section 6.5. Reimbursement. Members and agents, employees and representatives of members may be reimbursed out-of-pocket expenses associated with Board sanctioned activity or for routine labor costs associated with performance of activities benefiting the Corporation, such as but not limited to financial and accounting services.

Section 6.6. Term of Office; Removal; Filling of Vacancies. Each elected officer of the Corporation shall hold office until such officer's successor is chosen and qualified in such officer's stead or until such officer's earlier death, resignation, retirement, disqualification or removal from office. Each appointive officer shall hold office at the pleasure of the Board of Directors without the necessity of periodic reappointment. Any officer or agent may be removed

at any time by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby. If the office of any officer becomes vacant for any reason, the vacancy shall be filled by the Board of Directors. If any officer of the Corporation shall violate any of the provisions of Article 11 herein, such officer may be removed by a majority vote of the Directors.

Section 6.7. President. The President shall be the chief executive officer of the Corporation and, subject to the provisions of these Bylaws, shall have general supervision of the activities and affairs of the Corporation and shall have general and active control thereof. The President shall preside when present at meetings of the Board of Directors. The President shall have general authority to execute bonds, deeds and contracts in the name of the Corporation and to affix the corporate seal thereto; to cause the employment or appointment of such employees and agents of the Corporation as the proper conduct of operations may require and to fix their compensation; to remove or suspend any employee or agent; and in general to exercise all the powers usually appertaining to the office of president of a corporation, except as otherwise provided by statute, the Certificate of Formation or these Bylaws.

Section 6.8. Vice President. The Vice President shall assist the President and shall perform such duties as may be assigned by the President or by the Board of Directors. In the absence of the President, the Vice President shall have the powers and perform the duties of the President. In addition, the Vice President shall have such other powers and duties as from time to time may be assigned by the President or by the Board of Directors.

Section 6.9. Secretary. The Secretary shall see that notice is given of all annual and special meetings of the Board of Directors and shall keep and attest true records of all proceedings at all meetings of the Board. The Secretary shall have charge of the corporate seal and shall have authority to attest any and all instruments of writing to which the same may be affixed. The Secretary shall keep and account for all books, documents, papers and records of the Corporation, except those for which some other officer or agent is properly accountable. The Secretary shall generally perform all duties usually appertaining to the office of secretary of a corporation. In the absence or disability of the Secretary, the duties of such office shall be performed and the powers may be exercised by the Assistant Secretaries in the order of their seniority, unless otherwise determined by the Secretary, the President or the Board of Directors.

Section 6.10. Assistant Secretaries. Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to such office by the Secretary, the President or the Board of Directors.

Section 6.11. Treasurer. The Treasurer shall be the chief accounting and financial officer of the Corporation and shall have active control of and shall be responsible for all matters pertaining to the accounts and finances of the Corporation and shall direct the manner of certifying the same; shall supervise the manner of keeping all vouchers for payments by the Corporation and all other documents relating to such payments; shall receive, audit and consolidate all operating and financial statements of the Corporation and its various departments; shall have supervision of the books of account of the Corporation, their arrangements and classification; shall supervise the accounting and auditing practices of the Corporation and shall have charge of all matters relating to taxation. The Treasurer shall have the care and custody of all monies, funds and securities of the Corporation; shall deposit or cause to be deposited all such

funds in and with such depositories as the Board of Directors shall from time to time direct or as shall be selected in accordance with procedures established by the Board; shall advise upon all terms of credit granted by the Corporation; shall be responsible for the collection of all its accounts and shall cause to be kept full and accurate accounts of all receipts, disbursements and contributions of the Corporation. The Treasurer shall have the power to endorse for deposit or collection or otherwise all checks, drafts, notes, bills of exchange or other commercial papers payable to the Corporation, and to give proper receipts or discharges for all payments to the Corporation. The Treasurer shall generally perform all duties usually appertaining to the office of treasurer of a corporation. Any or all of the duties of the Treasurer may be delegated to one or more appointive officers or employees of the Corporation upon the approval of such delegation by the Board of Directors. In the absence or disability of the Treasurer, the duties of such office shall be performed and the powers may be exercised by the Assistant Treasurers in the order of their seniority, unless otherwise determined by the Treasurer, the President or the Board of Directors.

Section 6.12. Assistant Treasurers. Each Assistant Treasurer shall generally assist the Treasurer and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to such office by the Treasurer, the President or the Board of Directors.

Section 6.13. Additional Powers and Duties. In addition to the foregoing specially enumerated duties, services and powers, the several elected and appointed officers (e.g. an Executive Director and any other employees) of the Corporation shall perform such other duties and services and exercise such further powers as may be provided by statute, the Certificate of Formation or these Bylaws, or as the Board of Directors may from time to time determine or as may be assigned by any competent superior officer.

ARTICLE SEVEN

CONTRACTS, CHECKS, DEPOSITS AND FUNDS

Section 7.1. Contracts. The Board of Directors may authorize any officer or officers, or agent or agents, of the Corporation, in addition to the officers so authorized by these Bylaws, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 7.2. Checks, Drafts or Orders for Payment. All checks, drafts or orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or officers, or agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors. In the absence of such determination, such instruments shall be signed by the President or the Treasurer of the Corporation.

Section 7.3. Deposits. All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board of Directors may select or as may be selected in accordance with procedures established by the Board.

Section 7.4. Conflicts of Interest. No contract or agreement may be entered into by and between the Corporation and any of the following: (a) a director, officer, committee member, or employee of the Corporation (hereinafter an “Insider”); or (b) any corporation, partnership, trust, sole proprietorship or any other entity (hereinafter an “Entity”) in which an interest is owned or held, directly or indirectly, by or for the benefit of an Insider, unless (i) the transaction is approved in accordance with Section 22.230 of the Texas Business Organizations Code; and (ii) if one or more of the parties to the contract is a “disqualified person” with respect to the Corporation with in the meaning of Section 4958 of the Internal Revenue Code, either (x) such transaction is reviewed and approved in accordance with the “rebuttable presumption safe harbor” provisions set forth in the regulations promulgated under Section 4958 of the Internal Revenue Code or (y) the Board of Directors or any committee thereof determines that such procedures are not necessary for the transaction involved and records its specific findings for making such determination; provided, however, that the following contracts and agreements shall not be subject to the foregoing prohibition: a wholly gratuitous transfer of assets or promise to transfer assets to the Corporation of any kind, including, but not limited to, a charitable contribution of cash or property to the Corporation, an interest-free loan, a wholly gratuitous lease, a pledge, a guarantee, an assumption of liability, a bailment, or a consignment. All Insiders shall, as a condition of qualifying and continuing to qualify as a director, officer, committee member and/or employee of the Corporation, abide by such conflict of interest policies as the Board of Directors may adopt from time to time.

ARTICLE EIGHT

ACTIONS WITHOUT MEETINGS

Section 8.1. Unanimous Consent. Any action required or permitted to be taken at any meeting of the Directors or the members of a committee may be taken without a meeting if a consent in writing setting forth the action to be taken shall be signed by all of the Directors or all of the committee members, as the case may be. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document.

Section 8.2. Other Action Without a Meeting. Any action required or permitted to be taken at any meeting of Directors or committee members may be taken without a meeting, if a consent or consents in writing, setting forth the action so taken, shall be signed by at least a majority (or such greater percentage as may be required for the particular action under the Texas Business Organizations Code or these Bylaws), of all the Directors or committee members, as the case may be, so long as at least twenty-four (24) hours' notice of the proposed action is sent to each director or each committee member at the address or facsimile number of such director or committee member that appears in the records of the Corporation. Prompt notice of the taking of any action by the directors or the members of a committee without a meeting by less than unanimous written consent shall be given to those directors or committee members who did not consent in writing to the action. Every written consent signed by less than all the directors or committee members entitled to vote with respect to the action that is the subject of the consent shall bear the date of signature of each person who signs the consent. No written consent signed by less than all the directors or committee members entitled to vote with respect to the action that is the subject of the consent shall be effective to take such action unless, within sixty (60) days after the date of the earliest dated consent delivered to the Corporation in the manner required by

law, a consent or consents signed by not less than the minimum number of directors or committee members that would be necessary to take the action that is the subject of the consent are delivered to the Corporation by delivery to its registered office, registered agent, or principal place of business, or by delivery to an officer or agent of the Corporation having custody of the books in which proceedings of meetings are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the Corporation's principal place of business shall be addressed to the President or principal executive officer of the Corporation. A telegram, telex, cablegram or similar transmission by a director or committee member, or a photographic, photostatic, facsimile or similar reproduction of a writing signed by a director or committee member, shall be regarded as signed by the director or committee member for purposes of this Section 8.2.

ARTICLE NINE

FUNDING OF THE CORPORATION

Section 9.1. Generally. The Corporation shall be funded through the collection of (a) fees assessed against Members based upon such Member's power consumption ("**Aggregation Fees**") as further described in this Article Nine; (b) Associate Member Dues assessed annually against Associate Members; and (c) specially assessed fees ("**Special Assessment Fees**") against Members or Associate Members that may be necessary to meet contractual or other legally enforceable obligations. Aggregation Fees (including Initial STAP Aggregation Fee and Initial CAPP Aggregation Fee as defined below), and Special Assessment Fees, may collectively be referred to herein as "**Fees.**" Associate Member Dues may collectively be referred to herein as "**Dues.**" The Board of Directors shall have the authority to set Fees and Dues and any penalties for failure to timely pay such Fees and Dues assessed against Members and Associate Members.

Section 9.2. Fees. In the first calendar year following the Merger, the Aggregation Fee for Members formerly members of South Texas Aggregation Project, Inc., shall not exceed \$00.001 per kWh per month (the "**Initial STAP Aggregation Fee**"). In the first calendar year following the Merger, the Fee for Members formerly members of Cities Aggregation Power Project, Inc., shall not exceed \$00.0013 per kWh per month (the "**Initial CAPP Aggregation Fee**"). After the expiration of such first calendar year, the Board shall set common Aggregation Fees for all Members sufficient to support the Corporation's annual budget. Associate Member Dues shall be one cent (\$00.01) per capita or \$1,000.00, whichever is greater, to be assessed annually in January. Associate Members without resident populations shall be assessed \$1,000.00 annually.

Section 9.3. Statements. Aggregation Fees shall be billed to Members on a monthly or other periodic basis by the Retail Electric Provider that is party to the current power supply agreement. Associate Member Dues shall be billed annually in January or on a pro rata basis in the month a political subdivision becomes an Associate Member. Special Assessment Fees, other fees and expenses ("**Expenses**") shall be billed to Members and Associate Members as may be appropriate. The Board shall determine due dates for Fees and Expenses.

Section 9.4. Books and Records. All Members of the Corporation shall have reasonable access to the books and records of the Corporation, including financial statements and budgets and audits. Notwithstanding the foregoing, the Board of Directors may adopt policies that

provide reasonable protection against the unreasonable disclosure of information. The Corporation's accounting shall adhere to the Generally Accepted Accounting Principals and shall be based upon the calendar year beginning January 1st and ending December 31st.

ARTICLE TEN

INDEMNIFICATION

Section 10.1. Liability. A Director, officer, employee or agent of the Corporation who performs his or her duties in good faith, in a manner he or she reasonably believes to be in the best interests of the Corporation, and with such care as an ordinarily prudent person in a like position would use under the same or similar circumstances, shall not have any liability for an action taken or omission made by such Director, officer, employee or agent of the Corporation in that person's capacity as an Director, officer, employee or agent of the Corporation. No Director, officer, employee or agent shall be liable for any action take or omitted by another Director, officer employee or agent.

Section 10.2. **INDEMNIFICATION**. EACH PERSON WHO AT ANY TIME SHALL SERVE, OR SHALL HAVE SERVED, AS A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE CORPORATION, OR ANY PERSON WHO, WHILE A DIRECTOR, OFFICER, EMPLOYEE OR AGENT OF THE CORPORATION, IS OR WAS SERVING AT ITS REQUEST AS A DIRECTOR, OFFICER, PARTNER, VENTURER, PROPRIETOR, TRUSTEE, EMPLOYEE, AGENT OR SIMILAR FUNCTIONARY OF ANOTHER FOREIGN OR DOMESTIC CORPORATION, PARTNERSHIP, JOINT VENTURE, SOLE PROPRIETORSHIP, TRUST EMPLOYEE BENEFIT PLAN OR OTHER ENTERPRISE, SHALL BE ENTITLED TO INDEMNIFICATION AS, AND TO THE FULLEST EXTENT, PERMITTED BY, ARTICLE 1396 SECTION 2.22A OF THE TEXAS NON-PROFIT CORPORATION ACT OR ANY SUCCESSOR STATUTORY PROVISION, AS FROM TIME TO TIME AMENDED, SUCH ARTICLE OR SUCCESSOR PROVISION, BEING INCORPORATED IN FULL IN THESE BYLAWS BY REFERENCE. THE FOREGOING RIGHT OF INDEMNIFICATION SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH THOSE TO BE INDEMNIFIED MAY BE ENTITLED AS A MATTER OF LAW OR UNDER ANY AGREEMENT, VOTE OF DISINTERESTED DIRECTORS, OR OTHER ARRANGEMENT. IT IS EXPRESSLY ACKNOWLEDGED THAT THE INDEMNIFICATION PROVIDED IN THIS ARTICLE COULD INVOLVE INDEMNIFICATION FOR NEGLIGENCE OR UNDER THEORIES OF STRICT LIABILITY.

ARTICLE ELEVEN

CODE OF CONDUCT

Section 11.1. Policy and Purposes. It is the policy of the Corporation that Directors and officers conduct themselves in a manner consistent with sound business and ethical practices;

that the public interest always be considered in conducting corporate business; that the appearance of impropriety be avoided to ensure and maintain public confidence in the Corporation; and that the Board establish policies to control and manage the affairs of the Corporation fairly, impartially, and without discrimination.

This Code of Ethics has been adopted as part of the Corporation's Bylaws for the following purposes: (a) to encourage high ethical standards in official conduct by Directors and corporate officers; and (b) to establish guidelines for such ethical standards of conduct.

Section 11.2. Conflicts of Interest.

(a) Except as provided in subsection (c), a Director or officer is prohibited from participating in a vote, decision, or award of a contract involving a business entity or real property in which the Director or the officer has a substantial interest, if it is foreseeable that the business entity or real property will be economically benefitted by the action. A person has a substantial interest in a business (i) if his or her ownership interest is ten percent or more of the voting stock or shares of the business entity or ownership of \$15,000 or more of the fair market value of the business entity, or (ii) if the business entity provides more than ten percent of the person's gross income. A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more. An interest of a person related in the first degree by affinity (marriage relationship) or consanguinity (blood relationship) to a Director or officer is considered a substantial interest.

(b) If a Director or a person related to a Director in the first degree by affinity or the first degree by consanguinity has a substantial interest in a business entity or real property that would be pecuniarily affected by any official action taken by the Board, such Director, before a vote or decision on the matter, shall file an affidavit stating the nature and extent of the interest. The affidavit shall be filed with the Secretary of the Board.

(c) A Director who has a substantial interest in a business entity that will receive a pecuniary benefit from an action of the Board may vote on that action if a majority of the Board has a similar interest in the same action or if all other similar business entities in the Corporation will receive a similar pecuniary benefit.

(d) An employee of a public entity may serve on the Board. It is specifically recognized that as an official or employee of a public entity, that person's primary loyalty is to the political subdivision that employs them. It shall not be a conflict of interest for said Board member to express opinions or vote in a manner that reflects the self-interest of the public entity that the Board member represents.

Section 11.3. Acceptance of Gifts. No Director or officer shall accept any benefit as consideration for any decision, opinion, recommendation, vote or other exercise of discretion in carrying out official acts for the Corporation. No Director or officer shall solicit, accept, or agree to accept any benefit from a person known to be interested in or likely to become interested in any contract, purchase, payment, claim or transaction involving the exercise of the Director's or officer's discretion. As used here, a benefit does not include:

(a) a fee prescribed by law to be received by a Director or officer or any other benefit

to which the Director or officer is lawfully entitled or for which he or she gives legitimate consideration in a capacity other than as a Director or officer,

(b) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the Director or officer;

(c) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(i) not more than one honorarium is received from the same person in a calendar year;

(ii) not more than one honorarium is received for the same service; and

(iii) the value of the honorarium does not exceed \$50 exclusive of reimbursement for travel, food, and lodging expenses incurred by the Director or officer in performance of the services.

(d) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest if reported as may be required by law.

Section 11.4. Bribery. A Director or officer shall not intentionally or knowingly offer, confer or agree to confer on another, or solicit, accept, or agree to accept from another:

(a) any benefit as consideration for the Director's or officer's decision, opinion, recommendation, vote, or other exercise of discretion as a Director or officer;

(b) any benefit as consideration for the Director or officer's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of duty imposed by law on the Director or officer.

Section 11.5. Nepotism. No Director or officer shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of an person related within the second degree by affinity or within the third degree of consanguinity to the Director or officer so appointing, voting or confirming, or to any other Director or officer. This provision shall not prevent the appointment, voting for, or confirmation of any person who shall have been continuously employed in any such office, position, clerkship, employment or duty at least thirty (30) days prior to the appointment of the Director or officer so appointing or voting.

ARTICLE TWELVE

MISCELLANEOUS

Section 12.1. Dividends Prohibited. No part of the net income of the Corporation shall inure to the benefit of any private individual and no dividend shall be paid and no part of the income of the Corporation shall be distributed to its Directors or officers. Notwithstanding the foregoing, the Corporation may reimburse reasonable expenses as provided in Sections 3.11 and 6.5.

Section 12.2. Loans to Officers and Directors Prohibited. No loans shall be made by the Corporation to its officers or Directors. Any Directors voting for or assenting to the making of any loan to a Director or officer which is prohibited by the Texas Business Organizations Code and Texas Non-Profit Corporation Act, and any officer participating in the making thereof, shall be jointly and severally liable to the Corporation for the amount of such loan until repayment thereof.

Section 12.3. Amendments. These Bylaws may be amended or repealed, or new bylaws may be adopted, at any meeting of the Board of Directors by the affirmative vote of a majority of the number of the Directors then in office. Notwithstanding the foregoing, notice of the proposed amendment, repeal or adoption must be contained in the notice of such meeting; provided, however, that the foregoing notice requirement shall not prohibit the Board of Directors from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new bylaws, as the case may be, in a modified form which is not identical to that described or set forth in the notice of such meeting.

Section 12.4. Fiscal Year. The fiscal year of the Corporation shall be based upon the calendar year beginning January 1st and ending December 31st.

Section 12.5. Seal. The Corporation's seal, if any, shall be in such form as shall be adopted and approved from time to time by the Board of Directors. The seal may be used by causing it, or a facsimile thereof, to be impressed, affixed, imprinted or in any manner reproduced.

Section 12.6. Gender. Words of either gender used in these Bylaws shall be construed to include the other gender, unless the context requires otherwise.

Section 12.7. Invalid Provisions. If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

Section 12.8. Headings. The headings used in these Bylaws are for convenience only and do not constitute matter to be construed in the interpretation of these Bylaws.

ARTICLE THIRTEEN

DISSOLUTION

The resolution to dissolve the Corporation may only be made by a three-fourths ($\frac{3}{4}$) vote of the Members of the Corporation, with each Member receiving one (1) vote. Such dissolution will thereafter be governed by the Code.

* * * * *

The undersigned, being the duly elected and qualifying Secretary of the Corporation, hereby certifies that the foregoing Amended and Restated Bylaws of the Corporation were duly adopted by the Board of Directors of the Corporation on December 9, 2010.

_____, Secretary

PROFESSIONAL SERVICES AGREEMENT BETWEEN
CITY OF NACOGDOCHES AND TEXAS COALITION FOR AFFORDABLE POWER,
INC.

This Professional Services Agreement (“AGREEMENT”) is made and entered by and between Texas Coalition for Affordable Power, Inc. (“TCAP”), a non-profit, political subdivision corporation, and City of Nacogdoches (“MEMBER”), a TCAP member.

SECTION 1 DURATION:

This AGREEMENT becomes effective as of signing by MEMBER and shall remain effective as long as MEMBER is being served by TCAP and MEMBER’s electric load included in a current TCAP procurement.

SECTION 2 PURPOSE OF AGREEMENT:

The purpose of this AGREEMENT is to define services and obligations of TCAP to MEMBER and obligations of MEMBER to TCAP and other members. In furtherance of this AGREEMENT, MEMBER will enter into a Commercial Electric Service Agreement (“CESA”) with a retail electric provider (“REP”) selected by TCAP pursuant to the terms set forth herein; provided that nothing in this AGREEMENT is intended to alter the price or other terms of MEMBER’s current CESA in effect through December 31, 2023.

SECTION 3 OBLIGATIONS OF TCAP TO MEMBER:

MEMBER authorizes TCAP to contract for the purchase of energy for MEMBER in the wholesale market from an energy manager selected by TCAP (“Energy Manager”) and to select an acceptable, cost-beneficial REP to serve MEMBER’s electric accounts. TCAP shall provide procurement services, which services shall consist of securing wholesale power for MEMBER through an alternative procurement strategy, such as TCAP’s Strategic Hedging Program (“SHP”), as may be authorized and defined by TCAP’s Board of Directors. MEMBER may elect to consider fixed-price, fixed-term offers for wholesale power supply, such election to be communicated to TCAP separately in writing by providing an Authorized Election Form to TCAP. If MEMBER has provided to TCAP an Authorized Election Form, TCAP’s procurement services to MEMBER shall also consist of arranging fixed-price, fixed-term offers to MEMBER following solicitation of competitive offers. TCAP consultants and attorneys will negotiate terms and conditions of all contracts, monitor performance of Energy Managers and REPs, work to avoid and remedy problems that may be encountered by MEMBER where possible, assist MEMBER with wires company issues, and represent MEMBER in energy related matters before State agencies, the courts or legislature. TCAP will provide additional customer services to MEMBER that are defined in SECTION 5.

SECTION 4 OBLIGATIONS AND RIGHTS OF MEMBER:

MEMBER will honor the terms of its CESA and promptly pay or promptly dispute invoices from its REP. MEMBER will comply with the confidentiality and non-disclosure obligations contained in its CESA and Section 7 of this AGREEMENT. MEMBER will designate one or more individuals to receive notices and updates from TCAP and will promptly update contact information. MEMBER will pay aggregation fees to support the non-profit functions of TCAP assessed annually by the TCAP Board of Directors and recovered as part of the energy charges paid to REP. Also, MEMBER will pay or receive refunds equal to the Quarterly Adjustment and the Annual Adjustment mutually agreed upon by TCAP and the Energy Manager to address certain variable costs and charges, including costs imposed by ERCOT, such payment or receipt of funds subject to the reserve account as further described herein. TCAP members will fund, and TCAP will maintain and administer, a reserve account to facilitate the reconciliation of any Quarterly Adjustments or Annual Adjustments by collecting any excess amounts paid and/or paying any deficient amounts incurred (as possible). The reserve account balance will be maintained at a minimum level to cover anticipated future needs for up to two (2) years. The TCAP Board may vote to refund to members amounts in excess of future anticipated needs. Any monies remaining in the reserve account at the dissolution of TCAP will be refunded to current membership at the time of dissolution. TCAP is owned and controlled by its members and is governed by a Board of Directors consisting of employees or elected officials of members. Consistent with TCAP's Bylaws, each MEMBER has a right to nominate its representative to serve on the Board of Directors and has a right to vote in annual elections of Board members. MEMBER has a right to attend or monitor each Board meeting. TCAP has a financial audit performed each year and MEMBER has a right to a copy of the annual audit upon request.

SECTION 5 TCAP SERVICES TO MEMBER:

A. Procurement of Energy Supplies and REP Services

1. TCAP Procurement Services and Capabilities

TCAP will assist prospective members in reviewing market conditions and in estimating the most price opportune time to contract for energy supplies. TCAP will work with MEMBER to achieve a competitive price that balances supply security and risk tolerance while maintaining superior billing and customer services. As a political subdivision corporation, offering electricity procurement to political subdivisions, TCAP has the ability to procure wholesale energy supplies and REP services separately to secure the most effective combination of competitively priced energy supplies and superior billing and customer services. TCAP may utilize either wholesale or retail sources of power, or some combination of both. TCAP may utilize multiple suppliers with different generation resources. TCAP will solicit bids from multiple sources for energy supplies. TCAP aggregates the load of all members to maximize clout in negotiating contract terms. TCAP's objective in negotiations with suppliers is to continue obtaining favorable terms

regarding band widths for annual usage based on total load of all members (rather than based on MEMBER's individual load) and to minimize fees for adding or deleting accounts. TCAP will monitor the wholesale and retail markets for favorable hedging opportunities. TCAP will also monitor, evaluate and issue requests for proposals for power development opportunities beneficial to its MEMBERS, including renewable projects (each, a "Power Project").

2. MEMBER Procurement Options

If MEMBER elects a fixed-price contract for a fixed period by submitting an Authorized Election Form, TCAP will function as MEMBER'S agent in the wholesale energy marketplace in soliciting, evaluating and negotiating each such fixed-price contract. Absent an election, MEMBER shall participate in other procurement strategy options offered by TCAP, such as TCAP's SHP, and TCAP will function as MEMBER's electric energy procurer. As such, TCAP will (i) oversee the Energy Manager, (ii) will direct the Energy Manager to solicit wholesale energy market quotes, (iii) will cause the Energy Manager to transact at the most favorable executable market quotes and (iv) will negotiate and develop the Energy Price in MEMBER'S CESA (the "CESA Energy Price"). The CESA Energy Price shall be developed and agreed upon by TCAP, the Energy Manager and the REP and shall include the wholesale energy market transactions as well as Energy Manager's estimate of any non-fixed charges, including zonal congestion charges, ancillaries service charges, and other charges in connection with MEMBER'S load. If MEMBER elects to purchase power from a Power Project solicited and chosen by TCAP via a competitive RFP process (or other similar process), TCAP will function as MEMBER'S electric energy procurer, and will direct the Energy Manager to include the value of the power procured from such projects in the development of MEMBER'S CESA price.

B. Customer and Billing Services Provided by TCAP

1. REP Portal

TCAP consultants oversee the development and presentation of the REP's portal for TCAP members; the REP will be responsible for operation of the portal. TCAP provides training and assistance regarding portal use.

2. REP Customer Service

TCAP negotiates with the REP regarding service standards and annually reviews REP performance. TCAP maintains a right to replace a REP for unsatisfactory performance without affecting the price of wholesale power, so long as the replacement REP has a credit rating acceptable to the Energy Manager. TCAP continuously monitors customer billings and will alert both the REP and MEMBER, when appropriate, of any billing errors and the adjustments needed to ensure accurate and reliable billings to MEMBER. TCAP will advocate on behalf of MEMBER when needed to resolve billing or customer service

issues. TCAP will review customer billings and make MEMBER aware of inactive accounts that MEMBER may be able to disconnect to save monthly charges.

3. TCAP Assistance with Budgets and Required Filings and Assistance with TDSP Issues

TCAP monitors Public Utility Commission (“PUC”) and ERCOT activity and will provide MEMBER a forecast of changes in non-by passable charges that may impact MEMBER’s annual budget estimates. TCAP will prepare an annual electricity cost estimate for MEMBER. TCAP will assist MEMBER in preparation of energy related reports that may be necessary for MEMBER to file in response to legislative or agency mandates. TCAP will assist MEMBER in understanding non-bypassable charges included in REP invoices, and assist in resolving issues caused by errors of MEMBER’S Transmission and Distribution Service Provider (“TDSP” aka “wires company”).

4. Information Services

TCAP maintains a member web site, www.tcaptx.com. In addition to regular blog postings on energy news relevant to MEMBER, TCAP has prepared and posted major reports on the history of deregulation in Texas and a history of ERCOT. TCAP consultants continuously monitor the Nymex gas market, ERCOT energy market, and economic conditions that may affect MEMBER, as well as activities at the PUC and ERCOT. Important trends are noted in consultant reports to the Board of Directors and are attached to Board Minutes. TCAP’s Executive Director prepares and distributes a monthly newsletter and coordinates TCAP activities with various city coalitions and Texas Municipal League (“TML”). The Executive Director monthly newsletters will also include important or trending issues in the energy markets.

5. Demand Response, Distributed Generation and Cost Savings Strategy

TCAP will work with relevant service providers to make available to MEMBER competitive demand reduction programs that facilitate MEMBER’s participation in TDSP and ERCOT cost reduction strategies approved by the PUC. Upon request, TCAP will monitor and evaluate demand reduction program performance metrics. TCAP will assist MEMBER in reviewing, analyzing and developing distributed generation programs that can reduce wires and energy costs and/or provide backup power to specific facilities. TCAP will assist MEMBER in meeting renewable energy goals established by MEMBER, including behind-the-meter solar projects and local wind projects.

6. Regulatory and Legislative Representation

TCAP will provide representation and advocacy services on energy issues relevant to MEMBER in regulatory and legislative areas including, but not limited to, ERCOT stakeholder meetings, PUC projects and dockets, and legislative actions.

7. Strategic Hedging

To the extent that there is sufficient interest and commitment of load of TCAP members within an ERCOT zone, and to the extent MEMBER has not elected a fixed-price contract for a fixed period, MEMBER will perpetually (subject to potential charter or ordinance constraints on length of contracts) commit to two-year participation obligations. MEMBER may terminate participation in the SHP, without energy price penalties and with minimal other termination fees, by providing sufficient notice as set forth herein (Section 6). A SHP price will be determined at least 9 months prior to the effective date of the price by averaging the winning bids from periodic competitive auctions that occur throughout the 24 months preceding the effective date. TCAP will direct Energy Manager to conduct the periodic competitive auctions. TCAP will have the right to audit the auction results. The auction process will be designed to identify competitively priced energy supplies from a variety of creditworthy suppliers, resulting in prices that are rarely, if ever, significantly above prevailing market prices and that should generally be less than pricing for long-term fixed priced contracts (when evaluated from a common contract start date and term). Designed to take advantage of the characteristics of the nation's well supplied energy markets, the SHP will also be flexible enough to respond to market changes when and if they occur in the future. Participation in the SHP may be viewed as a series of 24 -month forward year-to-year contracts for as long as desired by MEMBER. If MEMBER participates in the SHP, MEMBER agrees that TCAP is authorized to direct Energy Manager to procure electric energy in the wholesale market on MEMBER's behalf and that TCAP is authorized to commit MEMBER's load to periodic competitive auctions.

SECTION 6 MEMBER RIGHT OF TERMINATION:

A. Fixed-Term, Fixed-Price Contract

MEMBER may terminate a CESA prior to the end-of-term specified in a contract subject to payment of "Liquidated Damages" prescribed in MEMBER's CESA. If MEMBER commits to a fixed multi-year term, fixed-price contract and wants to terminate the agreement prior to the end of the fixed multi-year term, liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the fixed-price agreement and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER's CESA.

B. Strategic Hedging Program

Since the SHP is based on a series of one-year term contracts, MEMBER is entitled to exit the program so long as notice of termination can be given prior to inclusion of MEMBER's load in the competitive auction process for a future year's price. TCAP will periodically notify MEMBER of expected procurement schedules and provide no less than 90 days

prior notice of any upcoming solicitation, and MEMBER may notify TCAP that it wants to exclude its load from the competitive auction process by giving notice at least 60 days prior to the next procurement date. Termination of involvement in SHP without appropriate notice will require calculation of damages as prescribed by CESA under Edison Electric Institute (“EEI”) principles with the intent of making the REP and Energy Manager whole for the termination. Liquidated damages will be based on the differential in the price of electric energy futures contracts used to support the SHP price and the price of comparable electric energy contracts at time of termination and shall also include damages prescribed herein and in the CESA, as applicable. If electric energy prices are lower at the point of termination than they were at time of contracting, MEMBER should expect to pay energy price damages upon early termination. In any event, any termination payment will be calculated and assessed in accordance with MEMBER’s CESA.

C. Participation in Power Projects

If MEMBER has chosen to purchase power from a Power Project through TCAP, in accordance with a signed Project Addendum attached to MEMBER’S CESA, MEMBER’s termination rights with respect to its commitment to purchase power from the Power Project shall be contained in the Project Addendum.

SECTION 7 CONFIDENTIALITY:

MEMBER is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If MEMBER receives a valid request under applicable public information laws for information related to this AGREEMENT or its CESA, it shall provide TCAP notice of the request including a description the information sought prior to MEMBER’s release of information so that TCAP has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the “Receiving Party”) shall keep confidential and not disclose to third parties any information related this AGREEMENT, except for disclosures to Authorized Parties or as otherwise required by law; and provided that MEMBER authorizes TCAP to provide Energy Manager and REP with any relevant information concerning MEMBER’s account, usage and billings. The provisions of this Section 7 apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this AGREEMENT for a period of two (2) years. “Authorized Parties” means those respective officers, directors, employees, agents, representatives and professional consultants of MEMBER and TCAP and each of their respective affiliates that have a need to know the confidential information for the purpose of evaluating, performing or administering this AGREEMENT.

SECTION 8 PARAGRAPH HEADINGS:

The paragraph headings contained in this AGREEMENT are for convenience only and shall is no way enlarge or limit the scope or meaning of the various and several paragraphs.

SECTION 9 COUNTERPARTS:

This AGREEMENT may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

SECTION 10 DEFINITIONS:

“Annual Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to Power Project settlements, if applicable. For those MEMBERS that participate in SHP, the Annual Adjustment shall also include (i) adjustments related to the loss factor for each specific ERCOT zone and (ii) adjustments related to load reconciliation as determined by TCAP, the Energy Manager and the REP.

“Energy Manager” means the wholesale market participant selected by TCAP to conduct SHP procurements at TCAP’s direction, in accordance with Section 5A and Section 7 of this Agreement. The Energy Manager may sell all or a portion of the required wholesale energy to TCAP or TCAP’s REP.

“Power Project” means a power generation project identified by TCAP to supply electric energy to one or more TCAP Members.

“Project Addendum” means the Addendum for a Power Project, if any, signed and attached as an Exhibit to MEMBER’S CESA.

“QSE Services Fee” means the QSE Services Fee in affect during the Delivery Term, as agreed between TCAP and Energy Manager.

“Quarterly Adjustment” shall mean either a credit to MEMBER for the over-collection of funds, or a charge to MEMBER for under-collection of funds, related to (i) ERCOT zonal congestion charges and (ii) ancillary services charges and other charges imposed by governmental agencies or ERCOT upon wholesale suppliers or REPs under statutes, regulations or courts for services within ERCOT zones. Said charges or refunds will be proportional to MEMBER’s relative contribution to TCAP load within specific ERCOT zones.

“Retail Electric Provider” or “REP” means the Retail Electric Provider that is party to (i) the REP Services Agreement with TCAP and (ii) the CESA between itself and MEMBER for the provision of retail electric service.

“Strategic Hedging Program” or “SHP” means an energy procurement strategy approved by TCAP’s Board of Directors, overseen by TCAP’s designated consultants, and administered by TCAP’s appointed Energy Manager, whereby wholesale energy is solicited and procured at agreed upon intervals, as directed by TCAP.

EXECUTED on this the _____ day of _____, 20____.

MEMBER:

By: _____

Printed Name: _____

Title: _____

TCAP:

By: _____

Printed Name: _____

Title: _____

COMMERCIAL ELECTRICITY SERVICE AGREEMENT

This Commercial Electricity Service Agreement, including all of the Attachments, Schedules, and Exhibits, which are attached and incorporated (collectively, the **"Agreement"**), is entered into between Gexa Energy, LP (**"Gexa"**), a Texas limited partnership, and [REDACTED] (**"Customer"**). Gexa and Customer may be referred to individually as a **"Party"** or collectively as the **"Parties"**.

SECTION 1: RETAIL ELECTRIC SALES AND SERVICES

1.1 Appointment and Scope. Customer appoints Gexa as its Retail Electric Provider (**"REP"**) for the ESI ID(s) served under this Agreement. Customer authorizes Gexa to: (i) act as Customer's REP for all purposes; and (ii) provide the services required of a REP including, without limitation, the procurement, scheduling and delivery of electricity throughout the Term to each of the ESI ID(s) in accordance with the terms set forth in this Agreement, including the Terms and Conditions of Service set forth in Attachment A. Customer's appointment imposes no other duties on Gexa other than those specified in this Agreement and the REP Services Agreement.

1.2 Agreement to Purchase. Customer shall purchase its electricity requirements from Gexa throughout the Term for each of the ESI ID(s) except as otherwise provided. The electricity and services Customer receives from Gexa is for Customer's exclusive proprietary use. Customer alone shall pay for electricity and services provided and for electricity and services Customer fails to take pursuant to its contractual obligations. If Gexa fails to deliver sufficient quantities of electricity to the TDSP for delivery to Customer or fails to schedule the delivery of sufficient quantities of electricity (collectively, a **"Scheduling Failure"**) the TDSP is obligated by law and by its tariff to deliver sufficient electricity to satisfy Customer's needs. If a Scheduling Failure occurs, Gexa shall financially settle, at no additional cost or expense to Customer, with its Qualified Scheduling Entity (as defined by ERCOT) for the purchase of electricity necessary to cover the Scheduling Failure.

1.3 Membership in TCAP. Customer is a current member of the Texas Coalition for Affordable Power, Inc. (**"TCAP"**), and has entered into the Professional Services Agreement (the **"PSA"**) authorizing the purchase of wholesale energy on behalf of the Customer by TCAP and/or TCAP's Energy Manager. Such wholesale energy purchases will affect the calculation of the Energy Price throughout the Term of this Agreement as described in Section 2. If, at any time during the Term, Customer elects to participate in a Power Purchase Agreement with a project to be developed for TCAP's members, and executes the Project Addendum for such project, then the Project Addendum will be attached hereto as Schedule I. Notwithstanding Customer's TCAP membership status, Customer agrees to fulfill all of its obligations under this Agreement, the PSA and, if applicable, the Project Addendum throughout the Term of this Agreement.

1.4 Term.

(a) Effective Date and Termination Date. Gexa shall provide retail electric service under this Agreement to each ESI ID beginning on the Effective Date and Terminating on the Termination Date, as further defined in this Section 1.4(a) (such period, the **"Term"**). The Effective Date will occur either (i) on the date occurring on or after the Expected Start Date stated in Attachment B on which each such ESI ID is enrolled with Gexa's service for any new customer, or (ii) if Customer is an existing customer then the Expected Start Date is the meter read date following the expiration of the Customer's prior Agreement with Gexa. Gexa shall continue to provide retail electric service to each ESI ID unless or until the Customer gives notice to TCAP and Gexa of its intent to terminate its membership with TCAP (**"Termination Notice"**). The Termination Date will occur on each respective ESI ID meter read date during the last month of the calendar year for which electricity has been purchased on Customer's behalf by either TCAP or the Energy Manager in accordance with the PSA prior to the Termination Notice, except that in no event will the Term exceed beyond December 31, 2037. For avoidance of doubt, the Termination Date for each respective ESI ID shall be the sooner to occur of (i) the meter read date occurring in the last month of the calendar year for which electricity has been purchased by either TCAP or the Energy Manager on behalf of the Customer prior to the Termination Notice or (ii) the meter read date occurring in December 2037. As a result of variations in the timing of the Effective Date described in this Section 1.4 the Term may include a partial calendar month in addition to the number of months set forth in Attachment B, if any.

(b) Delayed Effective Date. Gexa shall use commercially reasonable efforts to cause the Effective Date for each ESI ID to occur on the Expected Start Date. If the Effective Date for an ESI ID occurs more than 20 days after the Expected Start Date, Customer may provide Gexa with evidence of the amount of electricity purchased by Customer from its current REP in connection with that ESI ID during the period on and after the 21st day after the Expected Start Date until the Effective Date (the **"Delayed Effective Date Period"**), and the total amount paid by Customer to its current REP for the electricity it purchased during the Delayed Effective Date Period (the **"Delayed Effective Date Electricity Amount"**). Upon receipt of evidence from Customer Gexa shall calculate and provide Customer a credit against future purchases under this Agreement equal to the positive amount resulting from the following calculation: (a)

the Delayed Effective Date Electricity Amount minus (b) the amount that Customer would have paid to Gexa pursuant to this Agreement during the Delayed Effective Date Period for the same amount of electricity purchased by Customer from its current REP during that period in connection with the affected ESI ID(s); provided, that Gexa shall not be required to provide a credit with respect to any period during a Delayed Effective Date Period where the delay was caused by an event outside of Gexa's control.

(c) Service After Term. If, for any reason, service continues beyond the Term, it will be on a month-to-month basis, and the Agreement will continue in effect for the ESI ID(s) except that the Energy Price will be the greater of: (i) the Energy Price as set forth in Section 2.1 below, or (ii) the aggregate weighted average of the Market Rate (as defined herein) as determined for all of the ESI ID(s), for as long as service continues. If Customer has not switched from Gexa to another supplier at the expiration of the Term, Gexa shall serve Customer at the rate set forth in this Section for a minimum of 60 days. After those 60 days, Gexa may continue to serve Customer or terminate the Agreement and disconnect Customer.

1.5 Modifications to ESI IDs. Gexa shall work with Customer in good faith during the Term to reasonably accommodate and assist Customer with the management of its electricity needs. If at any time during the Term, Customer wants to i) add or delete one or more ESI IDs, ii) otherwise modify the ESI ID information as a result of a decision by Customer to open, close or sell a facility owned or leased by Customer, iii) expand an existing facility, or iv) increase an existing facility's metered load, then Customer shall provide written notice to Gexa of such change ("ESI ID Change Notice"). If such change to the ESI ID is expected to occur prior to the first month of any calendar year for which the Energy Price has been established as of the date of the ESI ID Change Notice, in accordance with Section 2.1 (a) of this Agreement, such notice shall include Customer's election of the "Special Load Threshold," as defined below, which will apply to such change in load. If, in Gexa's reasonable judgment, i) the addition is a separately metered load which does not exceed the applicable Special Load Threshold; or ii) does not result in a net increase in excess of the applicable Special Load Threshold for an existing facility, Gexa shall use commercially reasonable efforts to promptly implement such changes, including providing required notices to ERCOT. If the addition is a separately metered load which exceeds the applicable Special Load Threshold, or results in a net increase in excess of the applicable Special Load Threshold after consideration of any contemporaneous offsetting load decreases, Gexa shall provide service to that ESI ID and shall determine any incremental charge or credit to provide service to any changed ESI IDs. Gexa shall apply such charge or credit to the affected ESI IDs, after such charges have been reviewed by TCAP. "Special Load Threshold" shall mean additional peak demand that is reasonably expected during the first twelve months following commercial operations to exceed, at Customer's election, either (i) 0.25 MW at any time or an annual average load of 0.125 MW or (ii) 1.0 MW at any time or an annual average load of 0.5 MW. Gexa shall make periodic reports regarding changes to the billing status of any ESI ID(s) available to Customer and TCAP. Amendments that add or remove ESI ID(s) as a result of changes made pursuant to this section are incorporated into this Agreement, and are effective on the Effective Date for each ESI ID(s) added to this Agreement or the date that retail electric service for any removed ESI ID(s) ceases or is transferred to another REP.

SECTION 2: RETAIL ELECTRIC ENERGY SERVICE CHARGES

2.1 Energy Price.

- (a) If Customer has elected to fix all or a portion of the Energy Price for a fixed term by providing an Authorized Election Form to TCAP in accordance with the PSA, the Energy Price shall equal the fixed price as determined by TCAP in accordance with the PSA, and the Authorized Election Form. Any portion of the Energy Price that is not fixed shall be noted in the Authorized Election Form, and shall be settled with Customer in accordance with Section 2.2 of this Agreement. If Customer has not made such an election, the Energy Price shall be determined in accordance with the PSA, as follows:
 - (i) TCAP shall periodically solicit, or direct its designated Energy Manager to solicit, wholesale energy market quotes, and may direct the Energy Manager to transact at the lowest of the market quotes obtained for the purpose of serving customer's load, in accordance with the PSA (each such transacted quote, a **"Wholesale Transaction"**).
 - (ii) Once TCAP has directed its Energy Manager to enter into Wholesale Transactions sufficient to serve Customer's load for a given calendar year, Energy Manager and TCAP shall establish the Energy Price for that Calendar Year in accordance with those procedures outlined in the PSA, which Customer hereby acknowledges it has reviewed and accepted. TCAP shall set the Energy Price for a given Calendar Year no later than nine (9) months prior to the start of such Calendar Year. If Customer elects to participate in a project and executes the Project Addendum, the Energy Price shall include an estimate of the Project Settlement for each month of the Calendar Year in accordance with the Project Addendum.
- (b) For the purposes of Section 3 the Energy Price shall be converted to dollars per kWh.

2.2 Energy Price Adjustments.

- (a) Energy Manager shall have the right to reconcile the revenues received from the Customer with Energy Manager's Supplier Cost on (i) a quarterly basis, by determining the Quarterly Adjustment in the manner specified in the PSA and (ii) on an annual basis, by determining the Annual Adjustment in the manner specified in the PSA. The Quarterly Adjustment and Annual Adjustment may be either a charge or a credit, and shall be collected from or remitted to Customer, as appropriate, in the manner specified in the PSA.
- (b) TCAP and Energy Manager may mutually agree to fix certain component charges comprising Customer's Energy Price for a given Calendar Year, if TCAP determines that fixing these charges is likely to benefit Customer. Charges that are fixed by TCAP and Energy Manager for a given Calendar Year shall not be included in the calculation of either the Quarterly Adjustment or the Annual Adjustment for such Calendar Year, in accordance with the PSA.

2.3 Additional Pass-Through Charges. Gexa shall pass through and identify separately on Customer's bill with no mark-up Delivery Charges, Non-Recurring Charges, or Taxes that are not included in the Energy Price(s). All charges are exclusive of Taxes. Pass-Through charges may include charges related to amounts owed to Gexa and/or Wholesale Supplier in accordance with Section 1.3.

2.4 Tax Exempt Status. Customer shall provide Gexa with all required exemption certificates if Customer is exempt from paying any Taxes. Gexa shall not recognize an exemption without the exemption certificates and shall not be required to refund or credit previously paid Taxes unless the taxing entity sends the refund to Gexa. Gexa shall, however, assign to Customer any applicable claims for refund.

SECTION 3: BILLING AND PAYMENT

3.1 Billing and Payment. Gexa shall invoice Customer's accounts on a monthly basis and shall bill Customer on a consolidated basis for all ESI IDs upon Customer's request. Gexa shall provide a summary bill for all accounts and detailed information for each account. Customer shall remit payment within 30 days of receiving the invoice. Gexa shall base the invoice amount on actual data provided by ERCOT and the TDSP. If ERCOT or the TDSP does not provide actual data in a timely manner, Gexa shall use estimated data to calculate the invoice and, upon receipt of actual data, reconcile the charges and adjust them as needed in subsequent invoices.

3.2 Project Settlement Agent Services. Gexa shall remit the total Project Settlement to the Project on a monthly basis, in accordance with the REP Services Agreement.

3.3 Late Penalties, Interest on Overdue Payments, Invoice Disputes. If Customer fails to remit all undisputed amounts on or before the due date, interest will accrue on any due and unpaid amounts from the due date at a rate of one percent per month, or the highest rate permitted by law, whichever is less. If Customer disputes a portion of an invoice it shall provide Gexa a written explanation specifying the amount in dispute and the reason for the dispute within 20 days of the invoice date. If Customer does not provide timely notice, Customer shall owe all amounts by the due date. Notwithstanding the above, if Customer notifies Gexa of a disputed invoice, regardless of whether Customer has already paid the invoice, Gexa shall make records in its possession that are reasonably necessary for Customer to determine the accuracy of the invoice available to Customer during normal business hours; provided, however that neither party may request an adjustment or correction of an invoice unless written notice of such dispute is given within twelve months after the due date of such invoice; provided further, that such twelve month limit does not apply in the case of TDSP meter tampering charges first billed to Gexa that prevent Gexa from reasonably adjusting invoices prior to the twelve month period. In all cases, Gexa and Customer shall use good faith efforts to resolve disputes. In the event the Parties are unable to resolve a dispute within ten days of the notice date, either Party may begin legal proceedings to seek resolution. Any amounts determined owed shall be paid within three days after a decision.

3.4 Aggregator Fees. Pursuant to the REP Services Agreement between Gexa and TCAP, Gexa is obligated to pay TCAP an amount determined by multiplying a TCAP Aggregation Fee by the volume consumed in association with the ESI IDs (the "Aggregator Fee"). Customer shall pay the Aggregator Fee. The initial TCAP Aggregation Fee is \$0.001 per kWh, however, it may be changed by the TCAP Board of Directors at any time. Gexa shall state the Aggregator Fee as a separate line item on the Customer's bill.

3.5 Billing Guarantee. Gexa shall issue an invoice based on actual or estimated usage to Customer for every ESI ID at least one time per month. If, for reasons other than Force Majeure, Gexa fails to invoice an ESI ID within 120 days of any scheduled meter read, Gexa irrevocably waives its right to invoice Customer for any energy consumed at that ESI ID for the meter read cycle that should have been invoiced, unless not less than 10 days prior to the expiration of such 120 day period, Gexa provides Customer with a written explanation of the circumstances that prevent Gexa from issuing that invoice and the expected time by which an invoice can be issued. In such event, Customer and Gexa shall determine a reasonable extension period, not to exceed 30 days, within which an invoice will be issued. Gexa shall adjust or true-up each invoice no more than twice and Gexa shall issue such adjustments within 210 days of the initial issue date. Notwithstanding the foregoing, Gexa may issue an invoice or partial invoice arising from meter tampering charges without limitation and within a reasonable time after first billed to Gexa by the TDSP.

SECTION 4: CUSTOMER INFORMATION, CREDIT AND DEPOSITS

4.1 Customer Information. By entering into this Agreement and appointing Gexa as Customer's agent for electricity service, Customer authorizes Gexa to obtain certain information that Gexa may need to provide Customer's electric service, including Customer's address, telephone number, account numbers, historical usage information, and historical payment information from Customer's TDSP, and Customer further authorizes its TDSP to release that information to Gexa.

4.2 Deposits and Other Security. A Party (the "**Requesting Party**") may require the other Party (the "**Providing Party**") to provide a deposit (or additional deposit if an initial deposit was also required), letter of credit, or other form of credit assurance reasonably acceptable to the Requesting Party (collectively, "**Performance Assurance**") during the Term of this Agreement if: (i) the Requesting Party determines in its reasonable discretion that there has been a material adverse change in the Providing Party's or its guarantor's (if applicable) credit status or financial condition (which, if applicable, will mean that its credit or bond rating has dropped lower than BBB- by Standard & Poor's Rating Group or Baa3 by Moody's Investor Services or ceases to be rated by either of these agencies); or (ii) Customer has been delinquent in paying the electric bill by more than seven days more than twice during the past twelve months. Any Performance Assurance, less any outstanding balance owed by Providing Party to the Requesting Party, will be returned to the Providing Party once the Providing Party's or its guarantor's (if applicable) credit or financial condition becomes satisfactory or, if applicable, to a credit or bond rating of BBB- or Baa3 or higher, whichever occurs earlier; or, if the Performance Assurance relates to delinquent payments, the Providing Party has paid all outstanding balances and has made all payments within the dates set forth in this Agreement for a period of six consecutive months.

SECTION 5: EARLY TERMINATION; DAMAGES

5.1 Cancellation by Customer for Insufficient Appropriations. If, during Customer's annual appropriations determination, the applicable governmental authorities do not allocate sufficient funds to allow Customer to continue to perform its obligations under this Agreement (an "**Appropriations Failure**"), then Customer or Gexa shall have the right to terminate this Agreement in full or as to any affected ESI ID upon 30 days advance written notice effective at the end of the period for which appropriations are made; provided, that if appropriations are subsequently allocated for electricity for the ESI IDs covered by this Agreement, then the termination may be revoked at Gexa's option and those appropriations shall continue to apply to this Agreement and shall not be used for an electricity supply agreement with another REP. Upon a termination of this Agreement for Appropriations Failure, in full or as to any ESI ID(s), Customer shall pay all amounts due Gexa under this Agreement, including the Customer Early Termination Damages.

5.2 Customer Early Termination Damages. Except in connection with the closure of a facility associated with an ESI ID pursuant to Section 1.4, in connection with a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Customer cancels this Agreement before the end of the Term and refuses to accept electric supply delivery from Gexa for any ESI ID(s), Gexa may charge Customer early termination damages equal to the sum of (a) the Retail Termination Payment, (b) the QSE Services Termination Payment, (c) the Quarterly and Annual Adjustment Payment, and (d) the Wholesale Transaction Termination Payment, as each of these terms are defined below (the sum total of these, the "**Customer Early Termination Damages**"). The "**Retail Termination Payment**" shall equal the product of (a) the Expected Usage for each ESI ID subject to Customer's cancellation or refusal of electric supply delivery ("**Customer Terminated Usage**") multiplied by (b) the sum of (i) the Aggregator Fee and (ii) the REP Services Fee specified in the REP Services Agreement. The "**QSE Services Termination Payment**" shall equal the product of (a) the Customer Terminated Usage grossed up for losses multiplied by (b) the QSE Services Fee, as defined in the PSA. The "**Quarterly and Annual Adjustment Payment**" shall be calculated by the Energy Manager in accordance with the PSA, and shall include any Quarterly and Annual Adjustment amounts for electricity provided to the Customer under this Agreement prior to the termination of this Agreement, which have not yet been charged or credited to Customer, as appropriate. For avoidance of doubt, the Quarterly and Annual Adjustment Payment may be either a charge or a credit to Customer, as calculated in accordance with the PSA. If the Customer Early Termination Damages are charged due to an Event of Default by Customer, then the Customer Early Termination Damages will also include Gexa's reasonable costs relating to the determination and collection of Customer Early Termination Damages, including attorney and consultant fees incurred. The provisions in Section 3 related to Billing and Payment apply to the billing, due date, and collection of Customer Early Termination Damages. Customer agrees that Customer Early Termination Damages are a reasonable estimate of the damages due Gexa for failure to accept electric supply, and are not punitive in nature.

5.3 Termination for Wholesale Supply Failure. If, during the Term, the Wholesale Transactions are terminated as a result of a default by the Energy Manager ("**Wholesale Supply Failure**"), then this Agreement will also terminate effective on the date the Wholesale Agreement terminates. In the event of a termination for Wholesale Supply Failure, Gexa shall pay Customer a Wholesale Termination Payment if required by Section 5.5.

5.4 Gexa Early Termination Damages. Except for a Wholesale Supply Failure, a Force Majeure Event, or as otherwise provided or excused in this Agreement, if Gexa cancels this Agreement and refuses to provide electric supply delivery to Customer for any or all ESI ID(s), Customer shall have the right to charge Gexa an early termination penalty equal to the amount determined as follows: the product of (i) the Expected Usage for each ESI ID subject to

Gexa's cancellation or refusal of electric supply delivery ("**Gexa Terminated Usage**") multiplied by (ii) the REP Services Fee specified in the REP Services Agreement (that result the "**Gexa Early Termination Damages**"). If the Gexa Early Termination Damages are charged due to an Event of Default by Gexa, then the Gexa Early Termination Damages will also include Customer's reasonable costs relating to the determination and collection of Gexa Early Termination Damages, including attorney and consultant fees incurred. Gexa agrees the Gexa Early Termination Damages are a reasonable estimate of the damages due Customer for failure to deliver electric supply, and are not punitive in nature.

5.5 Wholesale Transaction Termination Payment. If the Wholesale Transactions are terminated then Gexa shall calculate the portion of the termination payment paid under each Wholesale Transaction attributable to Customer's load. The termination payment under each Wholesale Transaction shall be calculated by subtracting the Wholesale Supplier's actual cost for the portion of the Wholesale Transaction still outstanding for the remainder of the Term from the current market value of comparable electric energy futures contracts. Energy Manager, in its sole discretion, shall determine the current market value of a comparable electricity futures contract within three (3) business days of the termination of a Wholesale Transaction, and shall be either (i) the value of the Wholesale Transaction actually sold to a third-party market participant or (ii) a third-party market quote for a comparable electricity energy future contracts. Energy Manager shall sum Customer's prorata share of each termination payment for each Wholesale Transaction attributable to Customer's Load to determine a total Wholesale Transaction Termination Payment under this Agreement (the "**Wholesale Transaction Termination Payment**"). Customer or Gexa shall pay the Wholesale Transaction Termination Payment to the other, as appropriate, in the manner described below and without regard to who is a defaulting party. If the Wholesale Transaction Termination Payment is negative, Customer shall pay Gexa the Wholesale Transaction Termination Payment. If the Wholesale Transaction Termination Payment is positive, Gexa shall pay Customer the Wholesale Transaction Termination Payment. To the extent a termination payment due from Gexa to the Energy Manager is adjusted in Gexa's account to reflect the full benefit of TCAP transacting with a replacement REP, Gexa shall make corresponding adjustments to the Wholesale Transaction Termination Payment on a pro-rata basis. Gexa shall remit a Wholesale Transaction Termination Payment due Customer, within 30 days of Gexa receiving the payment from the Energy Manager. Customer shall remit a Wholesale Transaction Termination Payment due Gexa within 30 days of Gexa's invoice. Gexa shall use commercially reasonable efforts to collect Termination Payments from the Energy Manager that include amounts due Customer.

SECTION 6: NOTICES AND PAYMENT

6.1 General Notice. Except as otherwise required by Applicable Law, all notices are deemed duly delivered if hand delivered or sent by United States, prepaid first class mail, facsimile, or by overnight delivery service. Notice by facsimile or hand delivery is effective on the day actually received, notice by overnight United States mail or courier is effective on the next business day after it is sent, and notice by U.S. Mail is effective on the second day after it is sent. The Parties shall send notices to the addresses below or any other address one Party provides to the other in writing:

- a. **If to Customer (type customer address below):**

[Redacted]

- b. If to Gexa:
Gexa Energy, LP
20455 State Highway 249, Suite 200
Houston, Texas 77070

6.2 Payments. The Parties shall send payments to the addresses below or any other address one Party provides to the other in writing:

- a. **If to Customer (type customer address below):**

- b. If to Gexa:

SECTION 7: DEFINITIONS

7.1 Definitions. In addition to terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in this Section 7.1. All other capitalized terms not otherwise defined shall have the meanings given them in the following documents, with any conflicting definitions contained in those documents applied in the following order: PURA, the PUCT Substantive Rules, and the ERCOT Protocols.

1. **"Actual Usage"** means the actual amount of electric energy (in kWh) used at the ESI ID(s) as determined by the TDSP.
2. **"Delivery Charges"** means those charges or credits from the TDSP pursuant to its tariff, including, but not limited to: Transmission and Distribution Charges, System Benefit Fund Charge, Nuclear Decommissioning Charge, Competitive Transition Charge, Standard Customer Metering Charge, Customer Charge, Merger Savings and Rate Reduction Credit, Excess Mitigation Credit and Utility Imposed Reactive Power Charges.
3. **"EEI Master Agreement"** mean an EEI Master Agreement between Gexa and the Energy Manager governing the Wholesale Transactions entered into by the Energy Manager in accordance with Section 2.1 and transferred by the Energy Manager to Gexa.
4. **"Effective Date"** means the date of the first meter reading of an ESI ID provided to Gexa by the TDSP after the TDSP and ERCOT shall have timely performed any required enrollment and cancellation procedures necessary to switch Customer's REP to such ESI ID to Gexa.
5. **"Electricity Related Charges"** means, unless noted otherwise: Ancillary Services Charge, Congestion, ERCOT Administrative Fee, Delivery Loss Charge, Transmission Loss Charge, Renewable Energy Credit Charge, Residential Energy Credit Charge, Unaccounted For Energy Charge, Qualified Scheduling Entity Charge, Imbalance Settlement Charge.
6. **"Energy Manager"** means the wholesale market participant designated by TCAP to perform the services described in the PSA.
7. **"Energy Price(s)"** means the rates per unit of measure specified in Section 2.1 and includes all Electricity Related Charges.
8. **"ERCOT"** means the Electric Reliability Council of Texas.
9. **"ERCOT Protocols"** means the document adopted, published, and amended from time to time by ERCOT, and initially approved by the PUCT, to govern electric transactions in the ERCOT Region, including any attachments or exhibits referenced in the document, that contains the scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, procedures, standards, and criteria of ERCOT, or any successor document thereto.
10. **"ESI ID(s)"** means the Electric Service Identifiers for the property service addresses identified on Attachment B to this Agreement or if Customer is an existing Gexa customer then the list of service addresses currently served by Gexa, as such list may be modified from time to time as provided in Section 1.4.
11. **"Expected Usage"** means either the amount stated in Attachment B calculated for the remaining Term, or if no amounts are stated or Customer is an existing Gexa customer then the average actual monthly Customer energy usage from the comparable month from the previous year (or if an average cannot be computed due to limited service by Gexa or other circumstances, an average monthly usage as is reasonably determined by Gexa) times the number of months remaining in the Term as outlined in Section 1.4.
12. **"kWh"** means kilowatt hour.
13. **"LMP" or "Locational Marginal Price"** means the price calculated for the applicable trading hub pursuant to the ERCOT Protocols.
14. **"Market Rate"** means 135% of the load-weighted average of the hourly LMPs at the corresponding load zone, as determined for any delivery period.
15. **"Nodal Market"** means the implementation of wholesale market design by ERCOT with locational marginal pricing for resources.

16. **“Nodal Congestion”** means the positive difference in price between the real-time settlement point price as determined by ERCOT for the trading hub and the real-time settlement point price as determined by ERCOT for the load zone associated with the customer Facilities.

17. **“Non-Recurring Charges”** means any charges imposed by the TDSP or other third parties on a non-recurring basis for services, repairs or additional equipment needed for Customer’s electric service.

18. **“PUCT”** means Public Utility Commission of Texas.

19. **“Project Settlement Payment”** means the Project Settlement Payment as defined in the Project Addendum, attached as Schedule I to this Agreement.

20. **“QSE Services Fee”** means the fee owed from Customer to Gexa, and remitted from Gexa to Energy Manager, for QSE Services performed by Energy Manager for the Term, as mutually agreed between TCAP and Energy Manager, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The QSE Services Fee shall be included in the Energy Price for the Term.

21. **“REP Services Agreement”** means the REP Services Agreement currently in effect during the Term, as amended from time to time, between Gexa and TCAP.

22. **“REP Services Fee”** means the fee owed from Customer to Gexa, for REP services rendered during the Term, as mutually agreed between TCAP and Gexa, the Customer having authorized TCAP to negotiate such fee on behalf of Customer in the PSA. The REP Services Fee shall be included in the Energy Price for the Term.

23. **“Taxes”** means all taxes, assessments, levies, duties, charges, fees and withholdings of any kind levied by a duly-constituted taxing authority and all penalties, fines, and additions to tax, and interest thereon that are directly related to the services provided under this Agreement, but does not include the System Benefit Fund fee and fees and charges imposed by ERCOT. By way of example only, Taxes includes: Sales Tax, Miscellaneous Gross Receipts Tax, PUCT Assessment Fees and Franchise Fees.

24. **“TCAP”** means Texas Coalition for Affordable Power, an aggregation pool of governmental and other entities organized and administered by TCAP of which Customer is a member for the ESI IDs.

25. **“TDSP”** or **“Transmission and Distribution Service Provider”** means an entity regulated by the State of Texas, which transmits or distributes electric energy.

“

Attachments:

Attachment A

Attachment B (for new TCAP Customers only)

Terms and Conditions of Service

Offer Sheet (ESI ID list and Expected Start Date)

CUSTOMER (type Customer name in field below):	GEXA: Gexa Energy, LP, By its General Partner Gexa Energy GP, LLC
By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:

Terms and Conditions of Service Attachment A

These Terms and Conditions of Service form an integral part of the Commercial Electricity Service Agreement between Customer and Gexa. In addition to the terms defined elsewhere in this Agreement, when used with initial capitalization, whether singular or plural, capitalized terms have the meanings set forth in Section 7.1 of this Agreement. Customer should thoroughly review the entire Agreement, including these Terms and Conditions of Service, before executing this Agreement.

A. REPRESENTATIONS AND WARRANTIES

A.1 Customer's Representations and Warranties. As a material inducement to entering into this Agreement, Customer represents and warrants to Gexa as follows: (a) it is a duly organized entity and is in good standing under the laws of Texas; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of contracts it is party to or laws applicable to it; (c) performance of this Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Customer will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of contracts it is party to or laws applicable to it; (e) this Agreement is a legal, valid, and binding obligation of Customer enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending; (f) there are no bankruptcy, insolvency, reorganization, receivership, or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it; (g) there are no suits, proceedings, judgments, rulings, or orders by or before any court or any government authority that could materially adversely affect its ability to perform the Agreement; and (h) as of the Effective Date and throughout the Term, there is no other contract for the purchase of electricity by Customer for the ESI ID(s), or, if such a contract presently exists, that it will terminate prior to delivery under this Agreement.

A.2 Gexa's Representations and Warranties. As a material inducement to entering into this Agreement, Gexa represents and warrants to Customer as follows: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform the Agreement; (b) the execution and delivery of the Agreement are within its powers, have been duly authorized by all necessary action, and do not violate the terms or conditions of its governing documents or contracts it is party to or any laws applicable to it; (c) performance of the Agreement will be duly authorized by all necessary action and will not violate the terms or conditions of its governing documents or contracts it is party to; (d) as of the date sales of electricity by Gexa to Customer under the Agreement start, Gexa will have all regulatory authorizations necessary for it to legally perform its operations and such performance will not violate the terms or conditions of its governing documents, contracts it is party to, or laws applicable to it; and (e) the Agreement constitutes a legal, valid, and binding obligation of Gexa enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, and other laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

A.3 Forward Contract. (i) This Agreement constitutes a forward contract within the meaning of the United States Bankruptcy Code ("**Code**"); (ii) Gexa is a forward contract merchant; and (iii) either Party is entitled to the rights under, and protections afforded by, the Code.

B. DISCLAIMERS OF WARRANTIES; LIMITATION OF LIABILITIES

B.1 LIMITATIONS OF LIABILITY. LIABILITIES NOT EXCUSED BY REASON OF FORCE MAJEURE OR AS OTHERWISE PROVIDED, ARE LIMITED TO DIRECT ACTUAL DAMAGES. GEXA IS NOT LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOSS OF REVENUES OR PROFIT. THESE LIMITATIONS APPLY WITHOUT REGARD TO THE CAUSE OF ANY LIABILITY OR DAMAGE. EXCEPT FOR (a) THE GEXA EARLY TERMINATION DAMAGES DUE IF GEXA DEFAULTS, (b) THE CUSTOMER EARLY TERMINATION DAMAGES DUE IF CUSTOMER DEFAULTS, AND (c) THE WHOLESALE TRANSACTION TERMINATION PAYMENT, THE LIABILITY OF EITHER PARTY TO THE OTHER FOR ANY OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF ALL DOLLARS PAID BY CUSTOMER TO GEXA (IF CUSTOMER) OR RECEIVED BY GEXA (IF GEXA) PURSUANT TO THIS AGREEMENT. THERE ARE NO THIRD PARTY BENEFICIARIES TO THIS AGREEMENT.

B.2 Duty to Mitigate. Each Party shall mitigate damages and use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

B.3 WAIVER OF CUSTOMER PROTECTION RULES AND CONSUMER RIGHTS. THE PARTIES FURTHER ACKNOWLEDGE THAT THE CUSTOMER PROTECTION RULES ADOPTED BY THE PUBLIC UTILITY COMMISSION (AS CONTAINED IN ITS SUBSTANTIVE RULES 25.471 ET SEQ.) ("**CUSTOMER PROTECTION RULES**") THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES DO NOT APPLY TO THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS SECTION, CUSTOMER EXPRESSLY WAIVES THE CUSTOMER PROTECTION RULES THAT PERTAIN TO RETAIL ELECTRIC SERVICE RELATED TO RESCISSION RIGHTS, CUSTOMER DISCLOSURES, DELIVERY OF CUSTOMER CONTRACTS TO CUSTOMERS, RECORDKEEPING, INTEREST PAID ON DEPOSITS AND CUSTOMER NOTICES TO THE FULLEST EXTENT ALLOWED

BY APPLICABLE LAW. CUSTOMER FURTHER WAIVES ITS RIGHTS UNDER THE DECEPTIVE TRADE PRACTICES--CONSUMER PROTECTION ACT, SECTION 17.41, ET. SEQ., BUSINESS & COMMERCE CODE, A LAW THAT GIVES CONSUMERS SPECIAL RIGHTS AND PROTECTIONS. CUSTOMER REPRESENTS AND WARRANTS TO GEXA THAT: (a) CUSTOMER IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION IN RELATION TO GEXA; (b) CUSTOMER IS REPRESENTED BY LEGAL COUNSEL THAT WAS NEITHER DIRECTLY NOR INDIRECTLY IDENTIFIED, SUGGESTED OR SELECTED BY GEXA; AND (c) CUSTOMER VOLUNTARILY CONSENTS TO THIS WAIVER AFTER CONSULTATION WITH ITS LEGAL COUNSEL.

B.4 UCC/Disclaimer of Warranties. The electricity delivered is a "good" as that term is understood in the Texas B&CC (UCC §2.105). The Parties waive the UCC to the fullest extent allowed by law and the UCC requirements do not apply to this Agreement, unless otherwise provided. If there is a conflict between the UCC and this Agreement, this Agreement controls. Neither Party controls nor physically takes possession of the electric energy prior to delivery to Customer's ESI ID(s). Therefore, neither Party is responsible to the other for any damages associated with failure to deliver the electric energy, nor for damages it may cause prior to delivery to Customer's ESI ID(s). Once the electric energy is delivered to Customer's ESI ID(s) it is deemed in possession and control of Customer. ELECTRICITY SOLD UNDER THIS AGREEMENT WILL MEET THE QUALITY STANDARDS OF THE APPLICABLE LOCAL DISTRIBUTION UTILITY AND WILL BE SUPPLIED FROM A VARIETY OF SOURCES. GEXA MAKES NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT, AND GEXA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. GEXA EXPRESSLY NEGATES ALL OTHER REPRESENTATIONS OR WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OF WARRANTY WITH RESPECT TO CONFORMITY, TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

B.5 Force Majeure. Gexa shall make commercially reasonable efforts to provide electric service, but does not guarantee a continuous supply of electricity. Gexa does not generate electricity nor does it transmit or distribute electricity. Causes and events out of the control of Gexa and Customer ("**Force Majeure Event(s)**") may result in interruptions in service or the ability to accept electricity. If either Party is unable to perform its obligations, in whole or in part, due to a Force Majeure Event, then the obligations of the affected Party (other than the obligation to pay any amounts owed to Gexa that relate to periods prior to the Force Majeure Event) are suspended to the extent made necessary by such Force Majeure Event. Therefore, neither Party is liable to the other Party for damages caused by Force Majeure Events, including acts of God, acts of, or the failure to act by, any governmental authority (including the PUCT or ERCOT and specifically including failure by ERCOT to make Customer meter read data available), accidents, strikes, labor troubles, required maintenance work, events of "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff, inability to access the local distribution utility system, non-performance by the supplier or the local distribution utility, changes in laws, rules, or regulations of any governmental authority (including the PUCT or ERCOT) that would prevent the physical delivery of energy to Customer's facilities, or any cause beyond such Party's control. The Parties agree that Appropriations Failures and Scheduling Failures are not Force Majeure Events.

C. CONFIDENTIALITY AGREEMENT

C.1 Confidentiality. Customer is a governmental body subject to public information laws, including Chapter 552 of the Texas Government Code. If Customer receives a valid request under applicable public information laws for information related to this Agreement, it shall provide Gexa notice of the request including a description of the information sought prior to Customer's release of information so that Gexa has the opportunity to determine whether such information is subject to an exception as trade secret, competitive, commercial, or financial information. With the exception of the preceding disclosures pursuant to public information laws, a Party (that party, the "**Receiving Party**") shall keep confidential and not disclose any to third parties Confidential Information which is disclosed to the Receiving Party by the other Party (that party, the "**Disclosing Party**") except for disclosures to Authorized Parties or as required by law. "**Confidential Information**" means information in written or other tangible form which is marked as "Confidential" when it is disclosed to the Receiving Party, except that Confidential Information shall not include information which (i) is available to the public, (ii) becomes available to the public other than as a result of a breach by the Receiving Party of its obligations hereunder, (iii) was known to the Receiving Party prior to its disclosure by the Disclosing Party, or (iv) becomes known to the Receiving Party thereafter other than by disclosure by the Disclosing Party. The provisions of this Section apply regardless of fault and survive termination, cancellation, suspension, completion or expiration of this Agreement for a period of two (2) years. Customer authorizes Gexa to provide TCAP with all information requested by TCAP about Customer's account and billings. "**Authorized Parties**" means those officers, directors, employees, agents, representatives and professional consultants of the Parties, and of the Parties' affiliates, that have a need to know the Confidential Information for the purpose of evaluating and performing this Agreement.

D. DEFAULT AND REMEDIES

D.1 Events of Default. An event of default ("**Event of Default**") means: (a) the failure of Customer to make, when due, any payment required under this Agreement for any undisputed amount if that payment is not made within fifteen (15) business days after receipt of written notice (facsimile or electronic mail are valid forms of notice for this paragraph) from Gexa; or (b) any representation or warranty made by a Party proves to be false or misleading in any material respect; (c) except as provided in clause (a) above or otherwise in this section D.1, the failure of any Party to perform its obligations under this Agreement and that failure is not excused by Force Majeure and remains uncured following 20 business days written notice of the failure; (d) the defaulting Party (i) makes an assignment or any general arrangement for the benefit of creditors; or (ii) files a petition or otherwise commences, authorizes or

acquiesces to a bankruptcy proceeding or similar proceeding for the protection of creditors, or has such a petition filed against it and that petition is not withdrawn or dismissed within 20 business days after filing; or (iii) otherwise becomes insolvent; or (iv) is unable to pay its debts when due; or (v) fails to establish, maintain or extend Credit in form and in an amount acceptable to Gexa when required; or (e) the Wholesale Transaction is terminated due to a default by Gexa under CESAs with other TCAP members or due to a default by the Energy Manager under the Wholesale Transaction. If an Event of Default listed in subsection (d) of this Section occurs, it is deemed to have automatically occurred prior to such event.

D.2 Remedies upon an Event of Default. If an Event of Default occurs and is continuing, upon written notice to the defaulting Party, the non-defaulting Party may (a) commence an action to require the defaulting Party to remedy such default and specifically perform its duties and obligations in accordance with the Agreement; (b) exercise any other rights and remedies it has at equity or at law, subject to the Agreement's Limitations of Liabilities; and/or (c) suspend performance; provided, however, that suspension shall not continue for longer than ten (10) Business Days unless the non-defaulting Party has declared an early termination with proper notice. If Customer is responsible for an Event of Default and fails to cure within ten (10) days of written notice (such additional cure period does not apply to default for non-payment), in addition to its other remedies, Gexa may (i) terminate this Agreement; and (ii) charge Customer the Customer Early Termination Penalty pursuant to Section 5 of this Agreement. Notwithstanding the above, Gexa shall not disconnect or order disconnection of service to Customer unless the following events have all occurred: (1) Customer has an Event of Default for nonpayment under Section D.1(a) above, (2) Gexa gives Customer a ten (10) day written disconnection notice; and (3) Customer does not pay all undisputed outstanding payments owed by the end of the ten (10) day notice period. .

E. MISCELLANEOUS PROVISIONS

E.1 Disclaimer. This Agreement does not constitute, create, or otherwise recognize the existence of a joint venture, association, partnership, or other formal business entity of any kind among the Parties and the rights and obligations of the Parties are limited to those set forth in this Agreement.

E.2 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and are not intended to affect the meaning, interpretation or construction of this Agreement.

E.3 Waiver. Except as otherwise provided, failure of a Party to comply with an obligation, covenant, agreement, or condition may be waived by the other Party only in a writing signed by the Party granting the waiver, but that waiver does not constitute a waiver of, or estoppel with respect to a subsequent failure of the first Party to comply with that obligation, covenant, agreement, or condition.

E.4 Assignment. Except as provided in the REP Services Agreement, Customer shall not assign this Agreement, in whole or in part, or any of its rights or obligations pursuant to the Agreement without Gexa's prior written consent, which shall not be unreasonably withheld. Gexa may withhold consent if a proposed assignee fails to be at least as creditworthy as Customer as of the Effective Date. Gexa may: (a) transfer, sell, pledge, encumber or assign the revenues or proceeds of this Agreement in connection with any financing or other financial arrangement; (b) transfer or assign this Agreement to a Gexa affiliate with operating capability and financial condition substantially similar to Gexa; (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Gexa with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement; and/or (d) transfer or assign this Agreement to a certified REP with an operating capability and financial condition substantially similar to Gexa as of the execution date of this Agreement. In the case of (b), (c), or (d), any such assignee shall agree in writing to be bound by these Terms and Conditions of Service, and upon assignment, Gexa shall have no further obligations under this Agreement. Gexa shall not assign the Agreement to a non-affiliated entity (including its guarantor) that has a credit rating lower than BBB- without the prior written consent of TCAP, which shall not be unreasonably withheld.

E.5 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person or party other than the Parties, their successors and permitted assigns; except that the Parties recognize that TCAP is entitled to receive the Aggregator Fee .

E.6 Severability. If a provision of this Agreement is held to be unenforceable or invalid by a court or regulatory authority of competent jurisdiction, the validity and enforceability of the remaining provisions are unaffected by that holding, and the Parties shall, to the extent possible, negotiate an equitable adjustment to the provisions of this Agreement in order to preserve the original intent and purpose of this Agreement.

E.7 Entire Agreement; Amendments. This Agreement constitutes the entire understanding between the Parties, and supersedes any and all previous understandings, oral or written, with respect to the subjects it covers. This Agreement may be amended only upon the mutually signed, written agreement of the Parties.

E.8 Further Assurances. The Parties shall promptly execute and deliver, at the expense of the Party requesting such action, any and all other and further instruments and documents which are reasonably requested in order to effectuate the transactions contemplated in this Agreement.

E.9 Emergency, Outage and Wire Service. In the event of an emergency, outage or service need, Customer shall call the TDSP for the service area of the ESI ID experiencing the emergency, outage or service need.

E.10 Customer Care. Customer may contact Gexa Customer Care if Customer has specific comments, questions, disputes, or complaints toll free at 1-866-961-9399, Monday to Friday 7:00 a.m. – 8:00 p.m. CST and Saturday from 8:00 a.m. – 2:00 p.m.. Gexa shall assist and cooperate with Customer regarding communications with a TDSP relating to service to any ESI ID served by Gexa under this Agreement.

E.11 Governing Law.

a. This Agreement is governed by and construed and enforced in accordance with the laws of the State of Texas applicable to contracts made and performed in the State of Texas, without regard to the State of Texas conflict of laws provisions.

b. All disputes between the Parties under this Agreement which are not otherwise settled will be decided by a court of competent jurisdiction in Harris County, Texas, and the Parties submit to the jurisdiction of the courts of the State of Texas and the Federal District Courts in Houston, Harris County, Texas. All disputes are governed under the laws of the State of Texas.

c. Subject to the provisions of E.11.a. above, this Agreement is subject to, and in the performance of their respective obligations under this Agreement the Parties shall comply with, all applicable federal, state and local laws, regulations and requirements (including the rules, regulations and requirements of quasigovernmental and regulatory authorities with jurisdiction over the Parties, including ERCOT) (collectively, "*Applicable Law*").

E.12 No Presumption Against Drafting. Both Parties contributed to the drafting of this Agreement. The rule of construction that any ambiguity is construed against the party who drafted this Agreement does not apply to this Agreement.

E.13 Counterparts; Facsimile Copies. This Agreement may be executed in counterparts, all of which constitute one and the same Agreement and each is deemed an original. A facsimile copy of either Party's signature is considered an original for all purposes, and each Party shall provide its original signature upon request.

E.15 Offer for Electric Service; Refusal of Service. This Agreement, including these Terms and Conditions of Service, constitute an offer for electric service, and is expressly conditioned on acceptance of this Agreement by Gexa. Gexa may refuse to provide electric service to Customer subject to the requirements of Applicable Law.



For Cities – By Cities

Making a Powerful
Choice

Texas Coalition for Affordable Power



Who is TCAP?

169 Members



89 Members – North Zone

54 Members – South Zone

13 Members – West Zone

13 Members – Houston Zone



Who Is TCAP?

- Not for Profit
- Aggregating 1.1 billion kilowatts
- Better as a group than on your own
- Open board meetings to all members
- Board is represented by peers
- Access to consultants at no additional charge
- TCAP negotiates the best contract language

TCAP Board

**Place 1-
Victoria**
(South)

**Place 2-
McAllen**
(South)

**Place 3-
Sugar Land**
(Houston)

**Place 4-
Corpus Christi**
(South)

**Place 5-
Lewisville**
(North)

**Place 6-
North Richland
Hills**
(North)

**Place 7-
Lancaster**
(North)

**Place 8-
Kingsville**
(South)

**Place 9-
Hurst**
(North)

**Place 10-
Edna**
(South)

**Place 11-
Palm Valley**
(South)

**Place 12-
Tomball**
(Houston)

**Place 13-
Grand Prairie**
(North)

**Place 14-
Wichita Falls**
(West)

**Place 15-
Odessa**
(West)

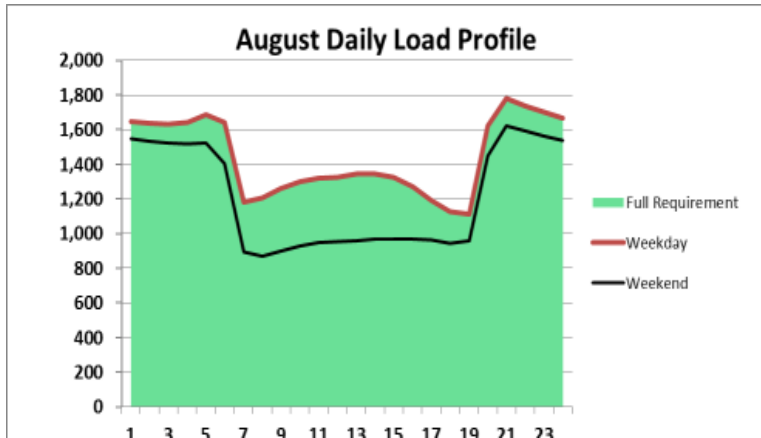
Large Members

Medium Members

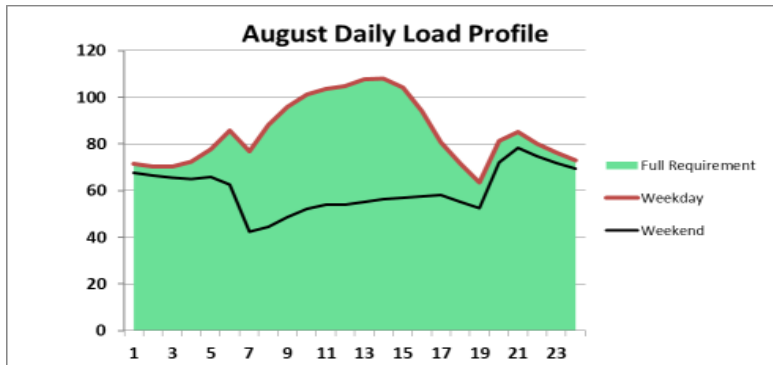
Small Members

At Large

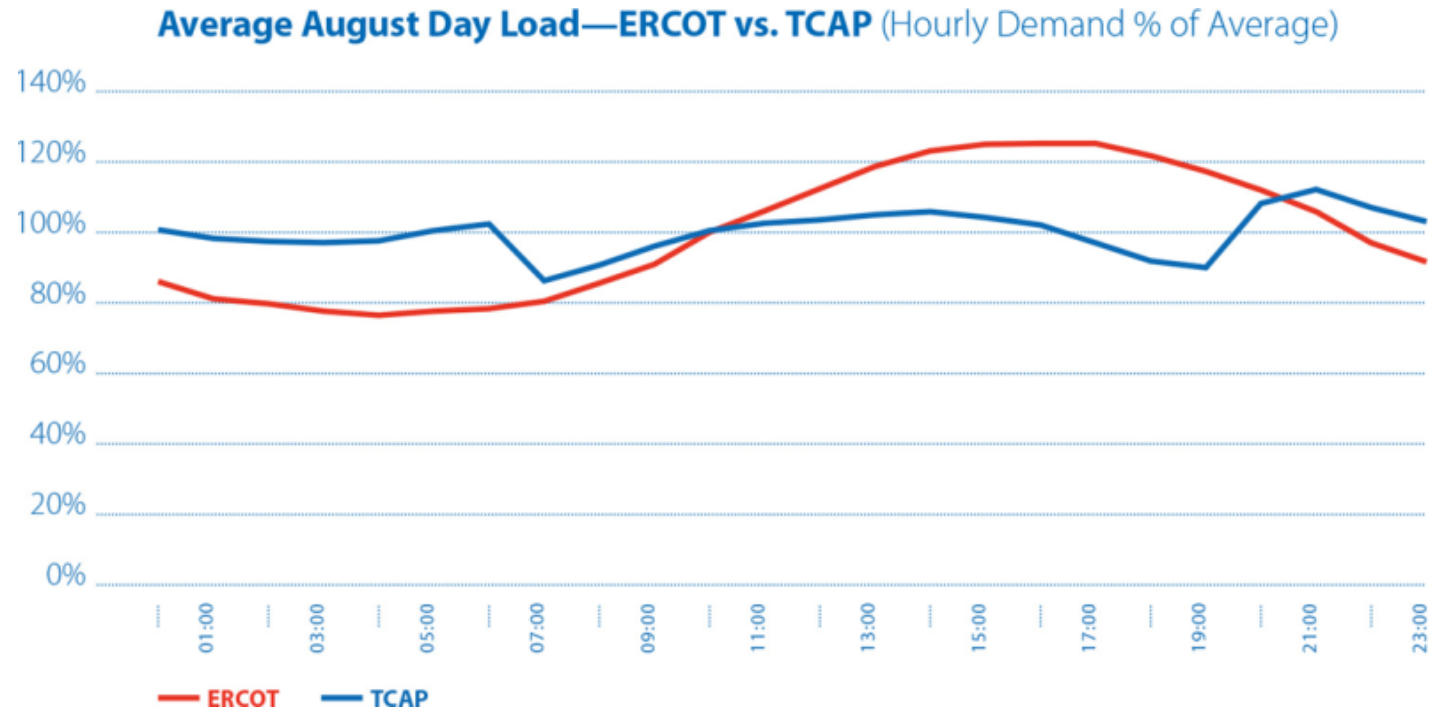
What is Aggregation?



Member A



Member B



Aggregation of all Members

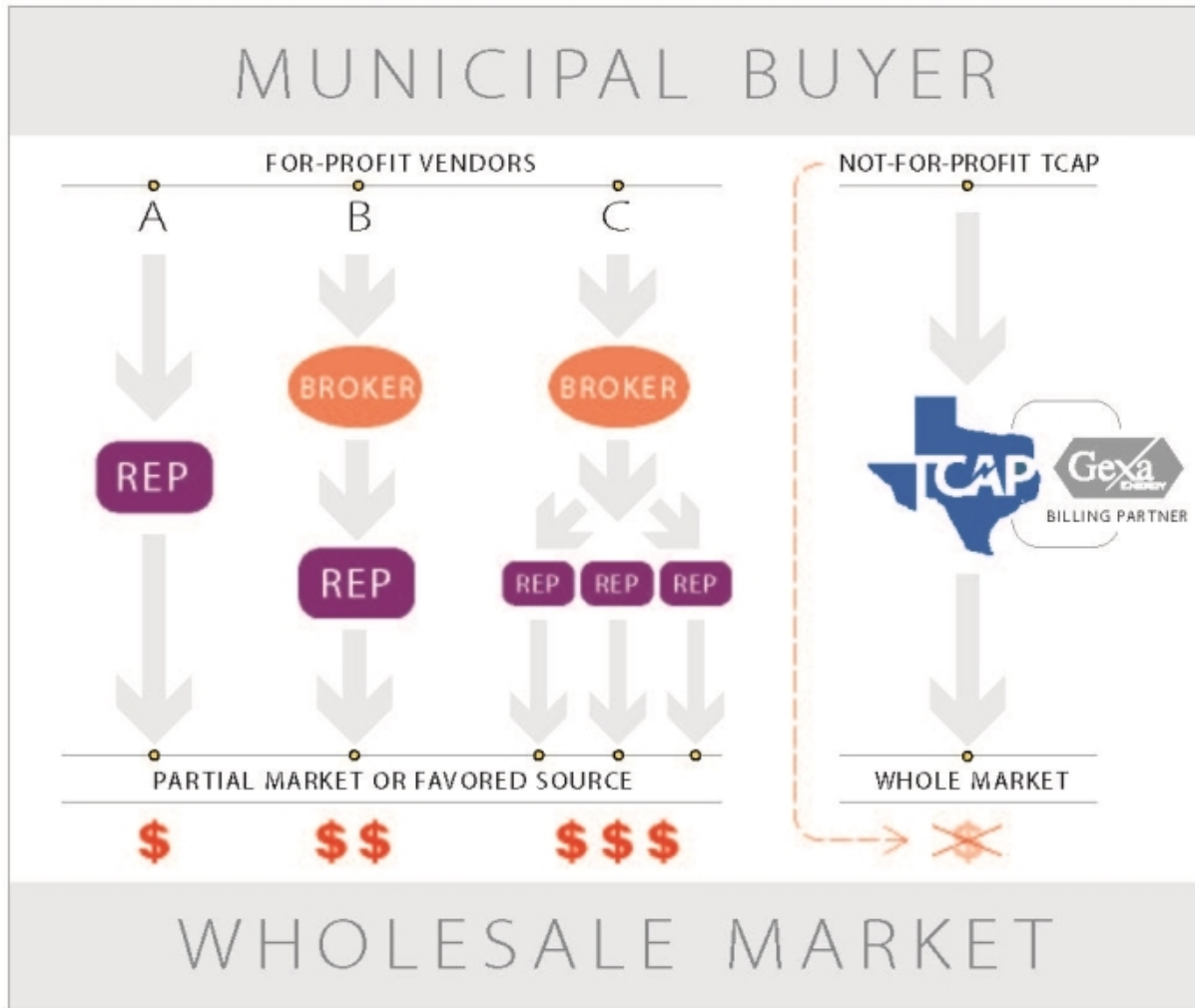
Uniquely Different

Local Government Code

- Section 304
Energy Aggregation for Local Governments
- Section 252.022
Exempts electricity from bidding requirements

Bifurcated Contract

- Buys in wholesale market
- REP only a billing partner
- Can change REP and not lose price

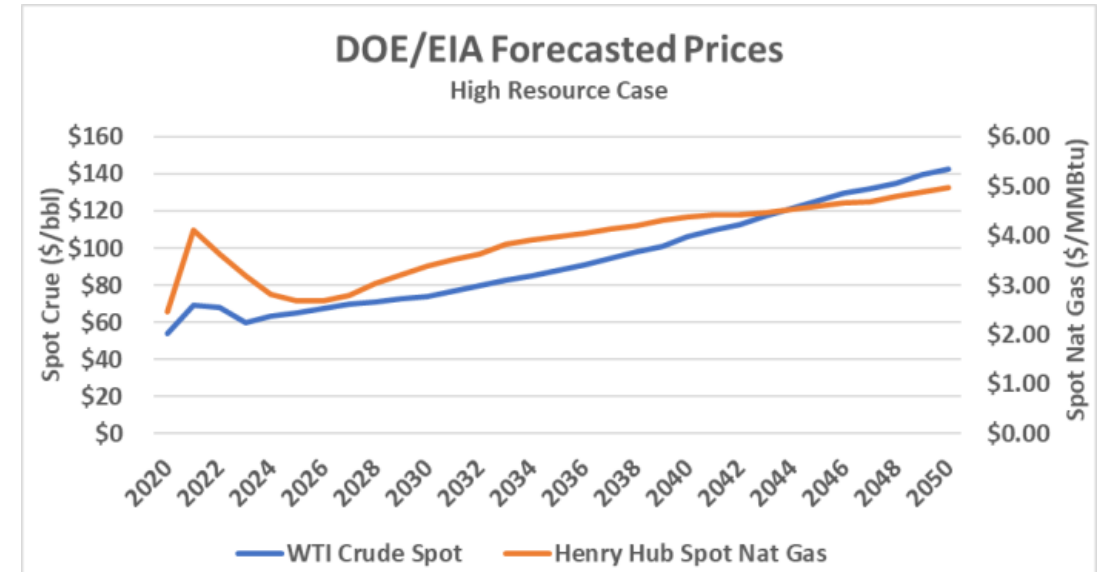
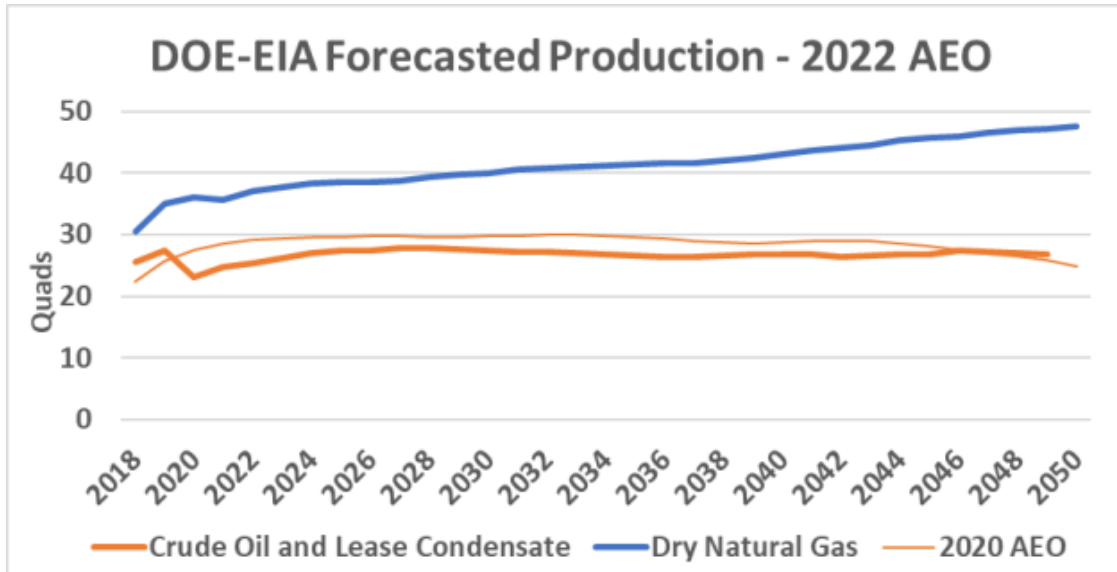


Contracting

- Fixed Price, Fixed Term Contracts
 - Pro - Energy price fixed for up to 5 years
 - Pro – Can plan budgets 5 years out
 - Con – Pick one day in the year to make 5 years of purchases
 - Con – Not able to take advantage if energy prices fall
- SHP – Strategic Purchasing
 - Pro – flexible, can take advantage of market
 - Pro – take advantage of falling prices
 - Pro – can lock in a contract if market or city changes mind
 - Pro – price is always known prior to budget
 - Pro/Con – prices are fixed for 1-year periods only

U.S. Energy Future is Bright

World's Largest Producer of Oil and Natural Gas

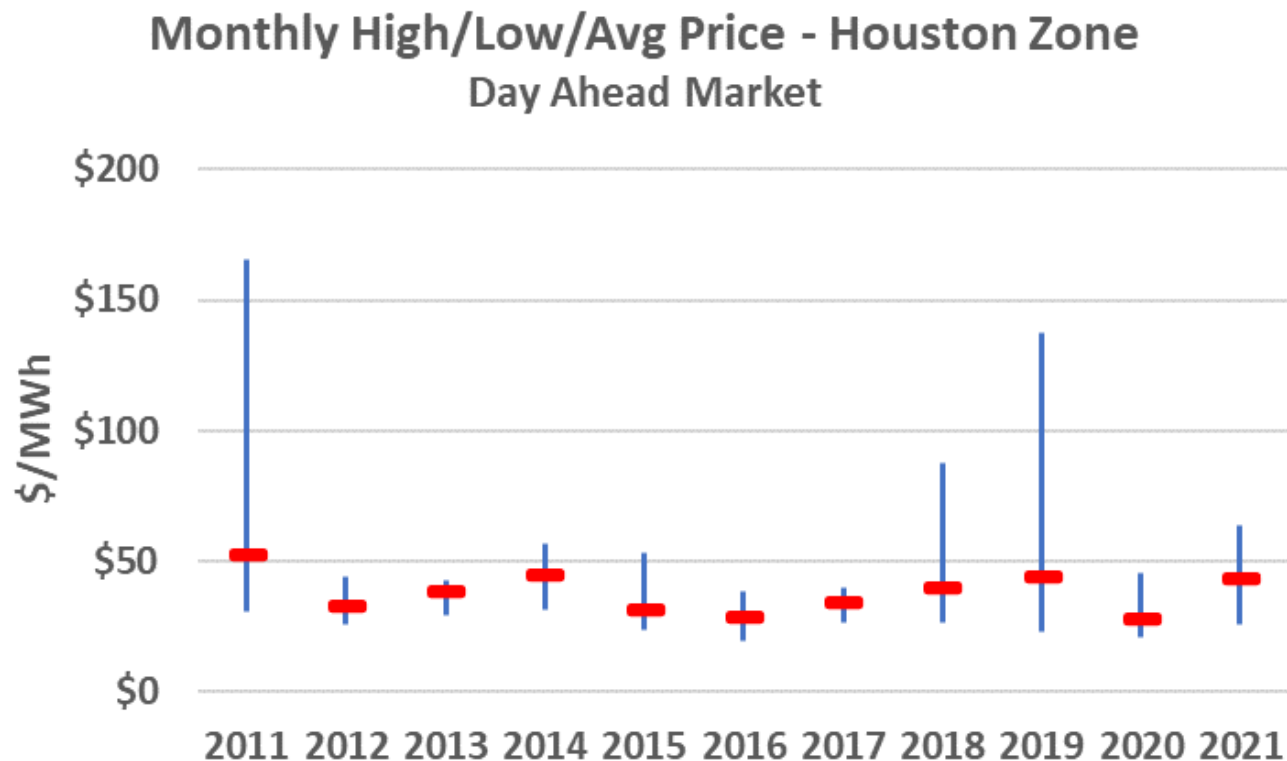


Positive Supply Outlook

DOE Production Estimate Through 2050 Show a Well Supplied Market

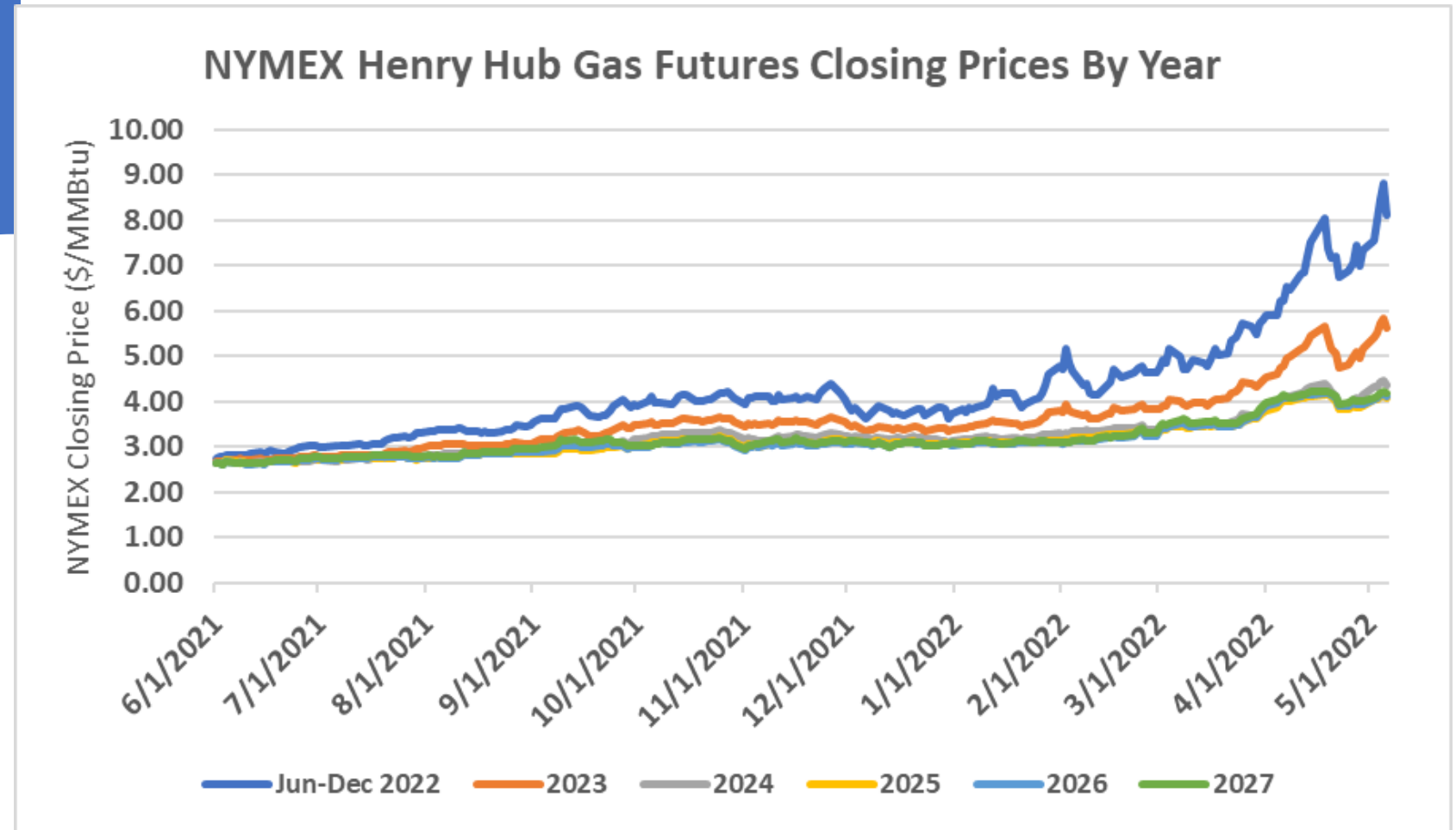
SHP - The Average Is Much More Stable

- Price Range Varies Greatly by Year
- But Average Pricing is Much Less Volatile
- Feb 2021 Excluded from 2021 Range



Natural Gas Prices

2022 and 2023 Prices Have Been Extremely High Recently



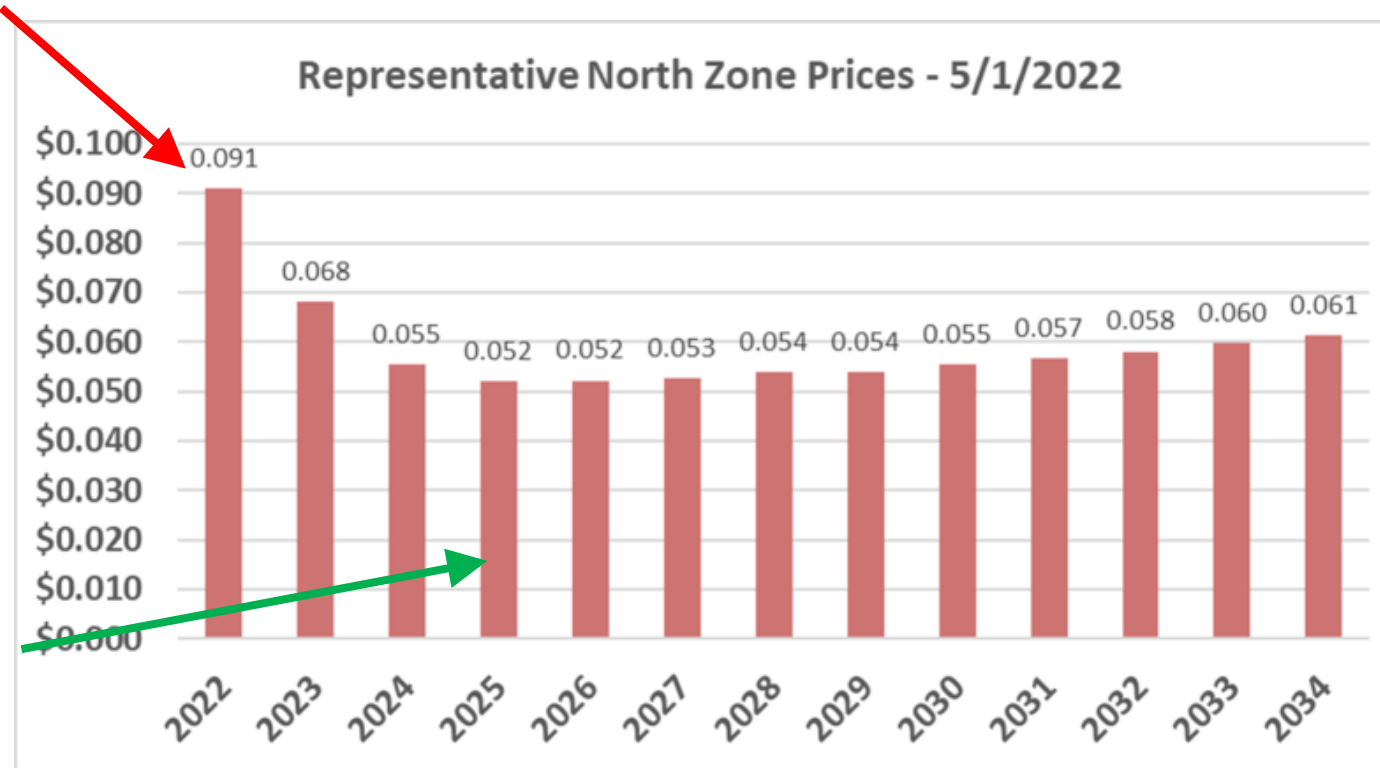
CONFIDENTIAL

ERCOT Pricing Pattern Dynamics

Why Does Price Change Over Time?

Prices Often Higher in Immediate Next Year Reflecting Uncertainty Created by Current Market Problems and Issues

Market Feels Short Term Problems will be Resolved and Carrying Charges and Market Premium are Low.



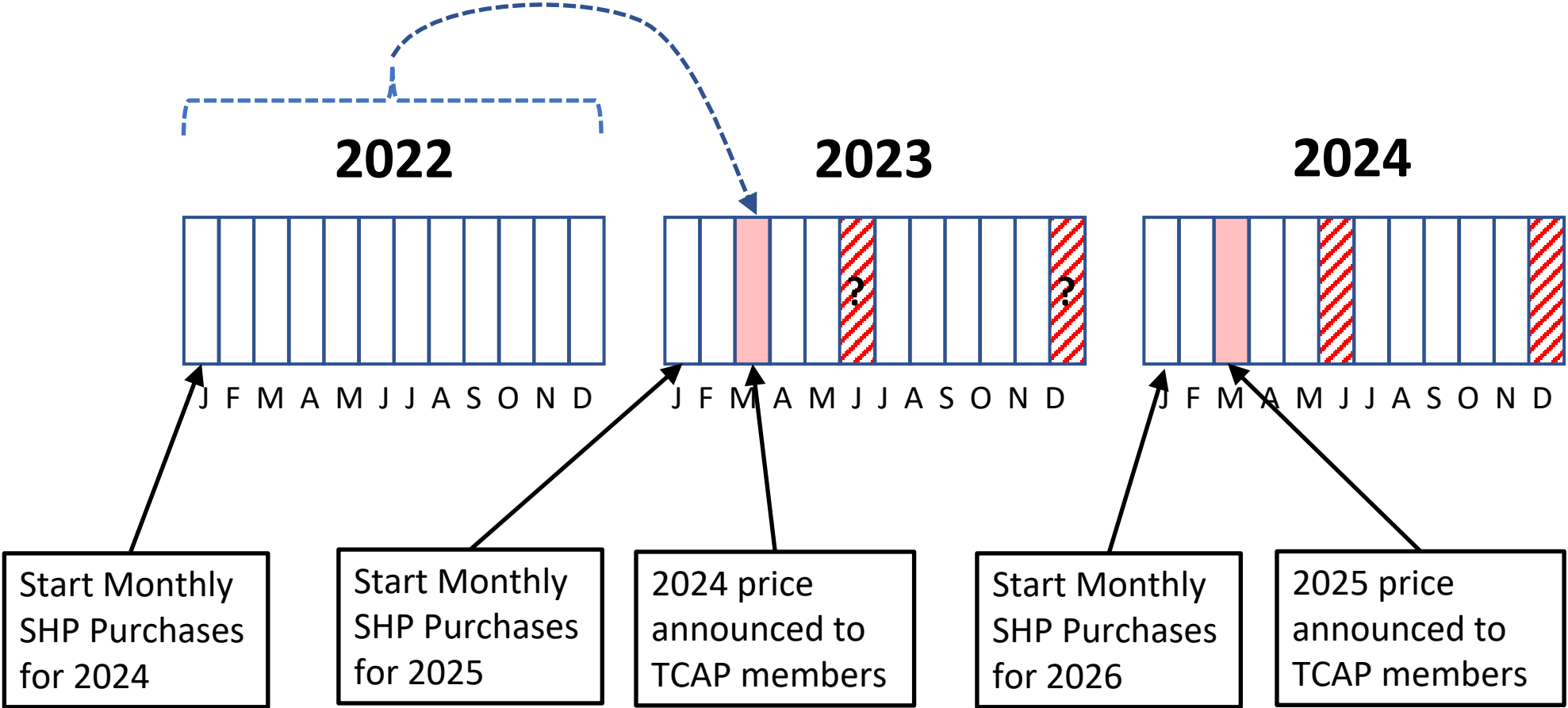
Prices Increase Over Time Reflecting Carrying Costs of Procurement for Future Needs and Risk Premiums for future market uncertainty

Market Prices are Currently Very High – Especially in Near Term Market

SHP Mechanics – What is Different?

- **Ultra-Competitive RFP Process for Procurement**
- **Periodic Procurements**
 - Multiple RFPs for Each Year's Procurement to Mitigate Price Risk
 - Avoids the “All-In” Guess of a Single Fixed Price Multi-Year Deal
- **Fits Member Needs**
 - **Timely** – Price known Prior to Fiscal Year Budgeting Needs
 - **Market Competitive** – Avoids Having To Explain a Long Term Out of Market Price to Citizens
 - **Flexible** – Periodic Off-Ramps Allow Member to Convert to Fixed Price if Desired
 - **Renewable** – SHP Uses RECs to Make Contract All Renewable

SHP – Timeline



 Proposed SHP Off-Ramp Option Events

Recap and SHP Advantages

- SHP is a unique opportunity for TCAP members
- Structured to Buy When Price is Advantageous
 - Avoid Buyer's Remorse of the "All-In" Guess of a Long-Term Fixed Price (50% correct)
 - Avoids Carrying Charges and Risk Premiums
 - Know Future Price Prior to Budgeting
- SHP is flexible – Adaptable and Can Convert to Fixed Price
- Allows for a diversified portfolio of energy



QUESTIONS?

CALL TCAP

Margaret Somereve
msomereve@tcaptx.com
972-764-3136



City Council Meeting

Date: May 17, 2022

Agenda Item: 6.C.

PRESENTER: Scott Weems, Interim Police Chief

ITEM/SUBJECT: Consider approval of a Mutual Aid Agreement between the City of Nacogdoches and the City of San Augustine for the provision of law enforcement during an emergency. (Interim Police Chief)

SUMMARY/BACKGROUND: Mutual Aid agreements allow law enforcement agencies to aid and assist other participating law enforcement agencies during an emergency by assigning some of their resources, equipment, and/or law enforcement personnel to the affected agency as circumstances permit. These agreements recognize the fact that natural or man-made occurrences may result in emergencies that exceed the resources, equipment and/or law enforcement personnel of individual law enforcement agencies. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens during an emergency.

The City of Nacogdoches has participated in the past and this agreement merely updates the existing agreement.

FINANCIAL:

No financial impact associated with this item.

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Not Applicable

CITY CONTACT: Scott Weems, Interim Police Chief
weemss@nactx.us
936-559-2619

ATTACHMENTS: 1. Mutual Aid Agreement- City of San Augustine

Mutual Aid Agreement

THE STATE OF TEXAS

COUNTY OF NACOGDOCHES

THIS MUTUAL AID AGREEMENT (the "Agreement") is made and entered into by and between the City of Nacogdoches, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the Nacogdoches City Commission, and the City of San Augustine, a municipal corporation under the laws of the State of Texas, acting by and through its governing body, the San Augustine City Council. This agreement is made pursuant to chapter 791 of the Texas Government code (the Interlocal Cooperation Act), as amended, chapter 418 of the Texas Government code (the Texas Disaster Act of 1975), as amended, and chapter 362 of the Texas Local Government Code.

Section 1

Purpose of Agreement

This agreement is made in recognition of the fact that natural or man-made occurrences may result in emergencies or incidents that exceed the resources, equipment and/or law enforcement personnel of a law enforcement agency. Each law enforcement agency who signs a copy of the Agreement has and does express its intent to aid and assist the other participating law enforcement agencies during an emergency or incident by assigning some of their resources, equipment, and/or law enforcement personnel to the affected law enforcement agency as circumstances permit and in accordance with the terms of the Agreement. The specific intent of the Agreement is to safeguard the lives, persons, and property of citizens by enabling other law enforcement agencies to provide additional resources, equipment, and/or law enforcement personnel as needed.

Section 2

Definitions

For the purpose of this Agreement, the following terms are defined as follows:

Aiding law enforcement agency: A participating law enforcement agency that provides resources, equipment, and/or law enforcement personnel to a stricken law enforcement agency during an emergency.

Disaster: An occurrence or threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or technological cause, including but not limited to fire, flood, earthquake, wind, storm, hazardous materials spill, or other water contamination requiring emergency action to avert danger or damage, epidemic, air contamination, blight, extended periods of severe and inclement weather, drought, infestation, critical shortages of essential fuels and energy, explosion, riot, hostile military or paramilitary action or acts of domestic terrorism.

Emergency: A natural or man-made situation that threatens or causes loss of life and property and exceeds the physical and organizational capabilities of a unit of local, state, or federal government.

Incident: A law enforcement incident that exceeds the physical or organizational capabilities of a local law enforcement agency. Typical incidents include, but are not limited to: barricaded persons, hostage situations, sniper situations, or high-risk felony arrests.

Law enforcement personnel: An employee of a participating law enforcement agency who is a peace officer (as defined by state law and the Texas Commission on Law Enforcement) and by virtue of his office or public employment, is vested by the state or federal law with the primary duty of maintaining public order and making arrests for violations of state or federal law.

Mutual aid: A definite and prearranged written agreement and plan whereby regular response and assistance is provided in the event of a natural or man-made emergency.

Participating law enforcement agencies: A law enforcement agency that commits itself to this mutual aid agreement by having an authorized representative sign this Agreement.

State: The term *state* refers exclusively to the state of Texas.

Stricken law enforcement agency: A participating law enforcement agency which has a primary jurisdiction over the site of the emergency but due to insufficient resources, equipment, and/or law enforcement personnel is unable to provide an adequate response to an emergency without the assistance of others.

Section 3

Agreement to Effectuate the Mutual Aid Plan

- A. Each undersigned party agrees that in the event of an emergency, it will respond to requests for assistance by a stricken law enforcement agency with such law enforcement personnel, equipment, facilities, or services as is, in the opinion of the aiding law enforcement agency, available. Provided, however, that each party reserves the right to refuse to render assistance or to recall any or all rendered assistance, whenever it believes that such refusal or recall is necessary to ensure adequate protection of its own jurisdiction or safety of its personnel.
- B. It is expected that requests for mutual aid under the Agreement will be initiated only when the needs of the stricken agency exceeds its resources. Aiding agencies will be released and returned to their own jurisdictions as soon as the situation is restored to the point where the stricken agency is able to satisfactorily handle the situation with its own resources or when an aiding agency decides to recall its assistance.
- C. Whenever an emergency is of such magnitude and consequence that it is deemed advisable by the senior officer present of the stricken law enforcement agency to request

assistance from an aiding law enforcement agency, he is hereby authorized to do so under the terms of this mutual aid agreement.

The senior officer present of the aiding law enforcement agency is authorized to and shall forthwith take the following actions:

- Immediately determine what type of assistance is being requested.
 - Immediately determine if the requested resources, equipment, and/or law enforcement personnel can be committed to the stricken law enforcement agency.
 - Immediately dispatch the resources, equipment and/or law enforcement personnel that are available to the stricken law enforcement agency.
- D. At the emergency site, the most senior officer of the stricken law enforcement agency present shall assume full responsibility and command for operations at the scene. Law enforcement personnel from the aiding agencies shall report to and shall work under the direction and supervision of the stricken agency. Provided, however, that at all times, the personnel of the aiding agencies shall remain employees of their own agency and shall adhere to the policies and procedures of their own employer. While working under the direction of the aiding agency, law enforcement personnel shall only be required to respond to lawful orders.
- E. The chief law enforcement officers of the participating agencies will establish an operational plan for giving and receiving aid under this Agreement. Said plan will be reviewed, updated, and tested at regular intervals.

Section 4

No Indemnity or Debt Created by this Agreement

- A. The participating agencies agree that this Agreement shall not give rise to any liability or responsibility for the failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as deemed to be an Agreement for the benefit of any third party or parties, or no third party or parties shall have any right or action whatsoever hereunder for any cause whatsoever.
- B. The participating agencies further agree that each agency will be responsible for defending its own respective entity and personnel in any action, claim, or dispute that arises in connection with or as the result of this Agreement and that each agency will be responsible for bearing their own costs, damages, losses, expenses, and attorney fees arising from or related to such action, claim, or dispute.
- C. The participating agency regularly employing the law enforcement officer shall pay all wages and disability payments, pension payments, damages to equipment and clothing, medical expenses, and travel, food, and lodging expenses. The participating agency whose authorized official requested the services shall reimburse the original participating agency after the payment is made and reimbursement is requested. Any payments made under this Agreement (1) will be based on cost recovery, (2) will fairly compensate for

the services performed and (3) will be made from the current revenues available to the paying party. The parties agree that when outside sources are available, they will seek reimbursement of any expenses incurred under this agreement from other possible funding sources in the manner required by the funding source. The parties agree they will cooperate in seeking reimbursement from any source including any monies set aside by federal and state authorities for law enforcement grants, disaster aid or any other funding source.

- D. By entering into this Agreement, no party waives sovereign immunity defenses or any other limitation of liability. No provision of this agreement is intended to modify or waive any provision of the Texas Tort Claims Act, as amended.

Section 5 Adoption and Termination

This mutual aid agreement shall be in full force and in effect when approved by the governing body of the participating agency and executed by a representative of a participating law enforcement agency who has the legal authority to sign and enter into this Agreement on behalf of his/her law enforcement agency.

Any participating law enforcement agency may withdraw from this Agreement upon giving ninety (90) days written notice addressed to each of the other agencies.

This signatory certifies that this mutual aid agreement has been adopted and approved by ordinance, resolution, memorandum of understanding, or other manner adopted by law.

City of Nacogdoches

Mayor Date

Chief of Police Date

Attest:

Notary Public, State of Texas

Date

City of San Augustine

[Signature] 4/26/22

Mayor Date

[Signature] 4/26/22

Chief of Police Date

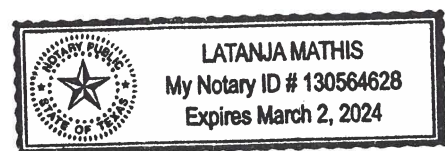
Attest:

[Signature]

Notary Public, State of Texas

4-26-2022

Date





City Council Meeting

Date: May 17, 2022

Agenda Item: 6.D.

PRESENTER: Mercedes Franks, Library Manager

ITEM/SUBJECT: Consider acceptance of donation in the amount of \$12,375 to the Nacogdoches Public Library through the 2022 National Endowment of the Arts Big Read Grant program. (Library Manager)

SUMMARY/BACKGROUND: The library has applied for and received a *Big Read* grant from the National Endowment for the Arts (NEA) for a community-wide reading program every year since 2018. The library recently received notice that it has been awarded a grant for \$12,375 for the purchase of this year's book selection, *Nothing to See Here* by Kevin Wilson.

Copies of the book will be distributed for free throughout the summer with related community-wide events taking place in October 2022. Nacogdoches Convention & Visitors Bureau and Nacogdoches Historic Sites have provided letters of support for the grant and several other organizations and businesses have committed to co-hosting events.

FINANCIAL:

Item is budgeted:

Revenue

Account No.: 24.560.31

Account Name: *Library Grant Revenue*

Amount: \$12,375

Expenditure

Account No.: 24.21.610.65

Account Name: *Book Expense*

Amount: \$12,375

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Community Engagement/Diverse Environment

CITY CONTACT: Brian W. Bray, Community Services Director
brayb@nactx.us
936-559-2935

ATTACHMENTS: 1. NEA Big Read Grant 2022 Submission



2022-2023 National Endowment for the Arts Big Read grant application form

Case ID
5005b00001Kfxe9AAB

Please check the boxes if you have prepared the following:

- I have my DUNS number
- Document uploads (narratives, budget, etc.)

Contact us

If you have any questions, please contact the NEA Big Read program staff at neabigread@artsmidwest.org, or call 612.238.8010.



2022-2023 NEA Big Read grant application form

Applicant information

Organization details

Organization Type
Government - Municipal

My organization is a(n) ...
Library

Did your organization expend \$750,000 or more in yearly expenditures in Federal awards during the most recently completed fiscal year? This is an aggregate of funds from Federal sources.
No



2022-2023 NEA Big Read grant application form

Upload

Project description narrative (one upload - no more than three pages)

Formatting requirements: US Letter paper size (8.5 x 11) in portrait orientation with at least 0.75 inch margins. Font equivalent to Times 12-point or larger. Do not use header and footer areas. Rich text formatting (bold, underlines, bulleted lists, etc.) encouraged.

In three pages or less, provide the following:

- Provide a rationale for your chosen NEA Big Read book.
- Describe the community you plan to reach with NEA Big Read programming, including any specific targeted audiences. For example, a community may be a geographic area, a demographic, or both.
- Describe your programming plans in detail, including types of activities, locations, and dates. Explain how your activities will be inclusive and engage diverse audiences. Be sure that your plans meet the programming requirements, and address the themes, writing, and content of the NEA Big Read book.
- Describe how you will promote your programming to a wide range of audiences.
- Explain how your program will distribute copies of your chosen NEA Big Read book and optional companion title(s).

Upload three-page project description narrative here (filetype: .doc or .docx)

Project Description Nacogdoches.docx



2022-2023 NEA Big Read grant application form

Upload

Project partnerships description narrative (one upload - no more than two pages)

Formatting requirements: US Letter paper size (8.5 x 11) in portrait orientation with at least 0.75 inch margins. Font equivalent to Times 12-point or larger. Do not use header and footer areas. Rich text formatting (bold, underlines, bulleted lists, etc.) encouraged.

In two pages or less, provide the following:

- Describe your partnerships with libraries (as applicable) and community organizations



2022-2023 NEA Big Read grant application form

Final steps

Application certification, legal, and privacy notices

By clicking "Review application" below, I certify on behalf of my organization that all the information provided in this application is true to the best of my knowledge, and that my organization will comply with all federal grant regulations, including providing organizational audit information if required by federal law, as stated in the [Assurance of Compliance](#).

By submitting this form, you are consenting to have the information you provide accessed, stored, and shared by Arts Midwest in accordance with our [privacy policies](#).

What happens next?

- Click "Review application" below.
- You will be taken to a summary page of all your responses.
- Please review your responses and print a copy of the page for your files.
- **When finished, click "Confirm." You will receive a confirmation email.**
- Arts Midwest staff will review your application after the application deadline.
- Arts Midwest staff will email the contacts listed in the application with any corrections needed. Once the application is reviewed and accepted, a PDF copy of the application as it will be forwarded to the review panel will be emailed to the contacts listed in the application.
- The contacts listed in the application will be notified in April 2022 via email after the review process is complete.

Your application must be submitted on or before Wednesday, January 26, 2022 to be eligible.

Your email address:

hicksc@nactx.us

Attached Files:

- ☐ Organization Description Nacogdoches.docx (23 KB)
- ☐ Project Description Nacogdoches.docx (25 KB)
- ☐ Project Partnerships Nacogdoches.docx (23 KB)
- ☐ ProjectBudget_NEABigRead_22-23 - Nacogdoches.xlsx (30 KB)

Organization description narrative (one page)

- Briefly describe your organization's mission, history, and achievements.

Describe the impact of your organization's experience with presenting community-wide programming that demonstrates an ability to conduct a successful NEA Big Read.

The Nacogdoches Public Library was established in 1972 thanks to the efforts of the Friends of the Nacogdoches Public Library and other community groups. It is the sole public library in Nacogdoches County. The library outgrew its original site and moved to its current location in 1997. Our organization strives to connect people through lifelong learning opportunities, cultural experiences, and social interactions. We enjoy a reciprocal borrowing relationship with Stephen F. Austin State University's Steen Library, making their considerable collection available to our patrons and vice versa.

In addition to the Big Read, we host annual events for all ages like the Día De Los Muertos Fiesta, Hygge Tea Party, Clothing Swaps, and an action-packed summer reading program. We offer Makerspace and STEAM programs year round, as well as technology classes, story times and children's activities. Tween and teen events include escape rooms, cooking and craft classes, and NERF battles. A thriving adult program series includes art workshops, cooking classes, special interest hobby clubs, and citizenship civics classes. We have also implemented and expanded alternative collections such as the Nacogdoches Seed Library and the Library of Things which circulate items that range from board games and telescopes to kitchenware and gardening tools.

Maintaining and developing community engagement and providing opportunities for meaningful interactions are essential functions of our organization, and the success of our mission hinges on breaking down barriers and fulfilling the role of a true community hub. The library participates at local festivals and events, teacher training at area schools, and school visits.

The library also collaborates year-round with area organizations to present a wide variety of offerings. Frequent partners include Historic Sites, Farmers Market, Caddo Mounds State Historic Site, Stone Fort Museum, the Friends of the Visual Arts, Cole Art Center and Gallery, Nacogdoches County Humane Society, and others. We promote city parks by hosting story hikes and Earth Day events and contribute to the local creative scene by partnering with community poetry nights and arts events. While we always try to expand our reach with the Big Read, we make community collaboration a central function of our daily operation.

Project description narrative (no more than three pages)

Provide a rationale for your chosen NEA Big Read book.

Nothing to See Here by Kevin Wilson centers on a quirky premise that quickly resolves into a metaphor for the importance of family and belonging, wherever one may find them. The main character, a young woman who has been stifled by an unfortunate youth of her own, is tasked with caring for a pair of children who have been failed by the adults in their life. The twist, that the children spontaneously combust when emotionally charged, sets them apart and results in their isolation and distrust of others. Their difference makes them dangerous, a point of connection to readers who have ever felt marginalized. The book's acerbic wit and the main character's blunt humor appeal to a wide readership. *Nothing to See Here* rides the line between humor and pain and between the serious and the absurd, yielding rich ground we can explore in a wide variety of programs.

Describe in one minute or less how you plan to read with NEA Big Read goals, including any specific targeted audiences. For example, a program may be targeted to area historians or both.

Nacogdoches is the oldest town in Texas, and the history of the region is a point of pride for residents. It is also home to Stephen F. Austin State University, a 4-year school with a current enrollment of 12,969 students, creating rich opportunities for partnerships. There are also substantial local cultural offerings from historic sites, museums, galleries, and parks to a thriving music and performance art scene. The city's population is 32,717 and the median age is 24.4 years, but Nacogdoches is also the center of Nacogdoches County, drawing in many of the additional 30,000 area residents for greater access to entertainment, retail, and library and recreational services. Big Read programs will reach into many corners of the community, taking the library's mission to those who are not regular patrons. The Big Read has become a highly anticipated event, and prior years' participants eagerly await the announcement of the book selection and programs. Our event planning is driven by the themes in the novel, including finding meaning in life and creating family in unusual circumstances. In general, equity and unity are among our core values, and we aim to offer both serious and weighty examinations of significant issues presented in the book, as well as celebratory community gatherings.

Describe your programming plan. Consider including items such as: How is this a "Big Read"? Explain how your institution will be involved and manage various programs. Be sure that your plans meet the program's goals and objectives and address the "readers, writers, and artists" of the NEA Big Read book.

September 2022 - ArtFest - a regional art fair presented by the Nacogdoches Arts Collaborative that takes place on the downtown square will have a "This is Lit" theme and will feature fire dancers, glass blowers, blacksmiths, and metal workers in a special section in honor of the Big

Read title. Fall Fling at the Nacogdoches Farmers Market will also feature a special exhibit area where we will promote our upcoming events and give away copies of the book.

9/30/22 - NEA Big Read Nacogdoches Kickoff - Family-friendly event on the downtown square in conjunction with the Fourth Friday Nac Snack music and food truck celebration.

Family Events:

10/4/22 - National Night Out with Nacogdoches Police, Fire, and Public Works Departments

10/29/22 - SFA Homecoming Bonfire - Booth and kids activities

Memories of Home, a Memory Jar Project with Caddo Mounds State Historic Site to be held in conjunction with the rebuilding of their grass house and site building which were destroyed in a tornado in 2019. There will be a focus on building resilience strategies to overcome traumatic events; special performance by Crescendo singing group; The Big Picture Photo project and exhibit with Better Together Initiative; Movie Nights, including Space Jam & Air Bud. Indoor Campout & "Campfire" Singalong; Vet Talk with local veterinarian and Humane Society with focus on special needs pets; Pet Adoption Drive with Humane Society; Life Size Game Night with oversize Life and Operation; Stone Fort Museum Exhibit and Reception; Musical performance by Crescendo music group; Healthy Alternatives to Junk Food Family Cooking Class; Firefighter Rescue Mission Escape Room.

Children's Events:

Weekly STEAM programs; Fire Safety Story Time with Nacogdoches Fire Department; Ice Cream Making Party; Kids Yoga with the Recreation Center, Pottery Class with SFA Art Education Department; Pen Pals Project; Toy Party Sleepover.

Teen Events: Book Trailer Workshop; Library Card Design Contest; Pizza Making Class; Recreating 80s & 90s Fashion Show; Maker Pro Series including Soldering & Candle Making.

Adult Events:

80s/90s Tribute Band Concert in Festival Park with Convention & Visitors Bureau; Feel the Heat Cooking Programs, including Spicy Ethnic Foods, Chili, & Flambe Desserts; Dumpster Fire Cross Stitch; Seed Swap with focus on variety and growing of hot peppers; Bring Your Own Mat Outdoor Yoga event with Whole Again Counseling & Wellness; Mindfulness workshop with Whole Again; Movie Nights, including 9 to 5, Firestarter, & The Family Fang; 80s Trivia at Fredonia Brewery & 90s Trivia at Nac Cocina Restaurant.

Book Discussions:

Keynote Panel with SFASU professors; Imagining Literary Spaces Book Discussion; Social Class & Privilege Book Discussion; Through the Gen X Lens Book Discussion; The Family We Choose Book Discussion; Mental Health & Wellness for Your Child: A Parenting Book Discussion; BFFs: Exploring Female Friendships Book Discussion; Creating a Family Book Discussion with Pineywoods Pride Coalition; Book Discussion at Bosslight Bookstore

Pending:

Basketball Tournament with Parks Advocacy League; Story Time with SFA Women's Basketball Team; Book Discussion with SFA Multicultural Affairs; SFA Theater Performance, Historic Sites event.

Describe how you will promote your programming to a wide range of audiences.

Promotion for the Big Read events begins during our Summer Reading Program, and we will distribute copies of the book at all library events. We will also hand out books throughout the summer at summer feeding sites, festivals, and the library. Staff outreach visits to city events, such as school gatherings, farmers market events, community festivals, and speaking engagements at civic organizations are also key opportunities. Participating businesses and organizations will receive a promotional packet with window clings, bookmarks, and other items and will be featured on our website and in social media. City of Nacogdoches departments, the Convention and Visitors Bureau, the Nacogdoches County Chamber of Commerce, and our university partners routinely cross-promote with us. Event coverage and discussions of the book will be featured in our library podcast, and we will post additional videos, such as a book shipment unboxing video, to lead up to the kickoff. We are fortunate to have a strong relationship with two local news channels, area radio stations, and the local newspaper. We also have a community access channel at our disposal. We send out a monthly e-newsletter and a community services activity guide, which is a glossy booklet distributed to all students in area schools, as well as to the wider community. The activity guide for the fall will feature the Big Read logo, and will include a brochure for families with younger children with reading recommendations and a list of family-focused events. We also insert logo labels in the distributed books. Finally, a page on our website will feature a list of events and partners, along with links to the reader resources and discussion questions at arts.org. This supplemental material has proven to be popular with local book clubs and teachers, who in turn, create additional discussions and program opportunities.

It also how your program will also use copies of your book. How do you plan to use the book in your program?

Copies of the book will be available at multiple sites in town, including the Convention & Visitors Bureau, historic sites, the Stone Fort Museum, Falling Star Art Gallery, the Cole Art Center, and Millard's Crossing Historic Village. We also take copies to local festivals and events as the opportunities are presented. For example, we participate in special events at the Farmers Market and distribute copies there. We have found that we can reach a wider audience by diversifying our distribution sites.

Project partnerships description narrative (no more than two pages)

Describe your partnerships with libraries (as applicable) and community organizations.

Explain the role each partner will play in your program, the activities each partner will undertake with your organization, and whether these partnerships are confirmed or pending.

Explain how your partnerships will allow you to reach your intended audience(s) and engage individuals of diverse backgrounds and ability levels. Discuss any proposed or existing partnerships with specific media outlets.

We have recruited partners that reach different segments of the population, from elementary school children to first generation college students and from the socially active and engaged to those with limited mobility who are unable to attend programs. Stephen F. Austin State University, through the auspices of a number of departments, will continue to be a major partner. SFA's Steen Library and the Nacogdoches Public Library enjoy a reciprocal arrangement, and we will distribute books to students at their site. In addition, university professors in Modern Languages, English, Anthropology, and History will participate in the keynote panel discussion, as well as additional book discussions throughout the month. The Education department will once again make the Big Read a central feature of their elementary and secondary teacher training, and they will serve as event volunteers, and they will have the opportunity to design and implement Big Read-related programs of their own, including developing reading lists and lesson plans for younger readers. Professors and students in the Art department will assist with craft classes at the library and at outreach events. The Stone Fort Museum, located on the SFASU campus, is the city's oldest museum and it offers cultural heritage learning opportunities. The museum will host an event in conjunction with a related exhibit.

The City of Nacogdoches will support our efforts in many ways, offering marketing and logistical help through the auspices of the Communications, Parks and Recreation, and Main Street departments. The city's Historic Sites department will host an after hours event, and we will offer events in multiple city parks. The Convention and Visitors Bureau provides promotional assistance through their wide social media reach and through program participation. Nacogdoches was recently designated as a Texas Music Friendly Community, and the local committee helps sustain and develop music-related events and will contribute to the Kickoff event. The Old University Building, a local history museum, and Millard's Crossing Historic Village will be book distribution sites. Resilient Nacogdoches is a community organization focused on health and environmental concerns and are frequent collaborators and will contribute to a number of events. Bosslight Bookstore will host a book discussion. We will partner with the Animal Shelter and Nacogdoches County Humane Society for an animal adoption event and a Vet Talk on special needs pets.

Nacogdoches Arts Collaborative and Whole Again Counseling and Wellness are two new partnerships that will result in several programs. Better Together is a community initiative of many organizations, and we will be partnering with them on several programs, including The Big Picture, a photography project that teaches adults and children to take high quality photos and invites them to contribute pictures of what the community means to them.

In addition to the city's media contacts, which include the Daily Sentinel Newspaper, KTRE & KETK, we also work with the SFA campus television and radio classes. Local radio stations, 103.3 and 96.3 will run free promotional spots for our events.



City Council Meeting

Date: May 17, 2022

Agenda Item: 7.A.

PRESENTER: Mario Canizares, City Manager, Patrick Woods, Perdue, Brandon, Feilder, Collins & Mott, LLP

ITEM/SUBJECT: Receive a report, hold a discussion and give staff directions on delinquent tax collections and management of properties struck off at tax foreclosure sales. (City Manager)

SUMMARY/BACKGROUND: Patrick Woods of the law firm of Perdue, Brandon, Fielder, Collins and Mott, LLP will provide a brief annual report on delinquent tax collection activities. Perdue, Brandon, Fielder, Collins and Mott, LLC is contracted with the Nacogdoches Central Appraisal District for the collection of delinquent taxes and has presented to other taxing entities about their activities.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Neighborhood Revitalization and Attainable Housing

CITY CONTACT: Mario Canizares, City Manager
canizaresm@nactx.us
936-559-2501

ATTACHMENTS: 1. PowerPoint Presentation



COLLECTION REPORT TO CITY OF NACOGDOCHES

Submitted by: *Patrick K. Woods & J. Douglas Burnside*

May 2022

www.pbfcmlaw.com

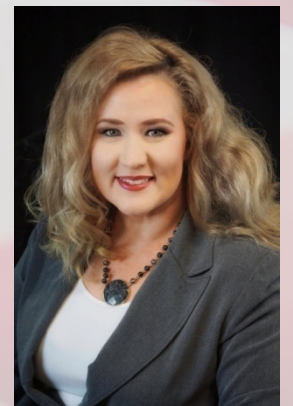


Perdue Brandon Advantage

When experience, reputation and performance matter, Perdue Brandon delivers for your delinquent tax attorney services.



Perdue Brandon Experience



- Firm has 52 years of experience in governmental collections
- Nacogdoches, Tyler and Garland Offices
 - 14 Offices In Texas • 58 Licensed Attorneys • 400+ Support Staff
 - Perdue's Nacogdoches team has over 100 years combined experience

When experience, reputation and performance matter.

Perdue Brandon Collection Program



- One-on-One Approach

- Robust Letter & Phone Campaigns

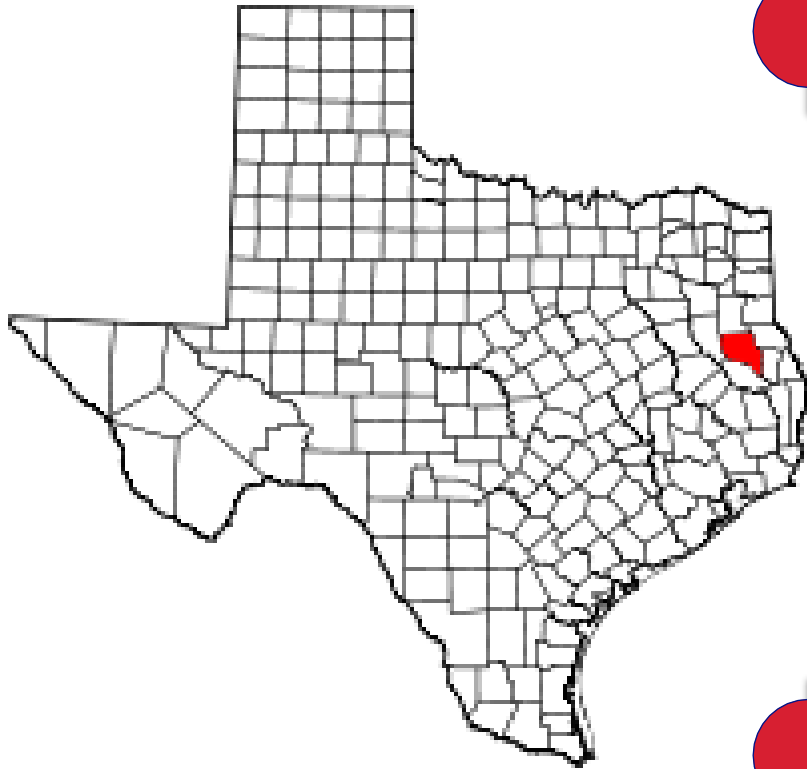
- Strategic Litigation Plan

- Business Personal Property Site Visit Program

- Firmwide Bankruptcy Committee

When experience, reputation and performance matter.

Local Resources



- Nacogdoches Office Connected to NCAD Office

Local Presence and Involvement

Convenience for your Taxpayers

Resource for CAD

When experience, reputation and performance matter.

Reputation Matters

- Perdue Brandon has long enjoyed a positive public perception with its superior collections and customized collection programs.
- Perdue Brandon is committed to premier customer service, with exceptional staff upholding **the core values of honesty, integrity and ethical conduct.**



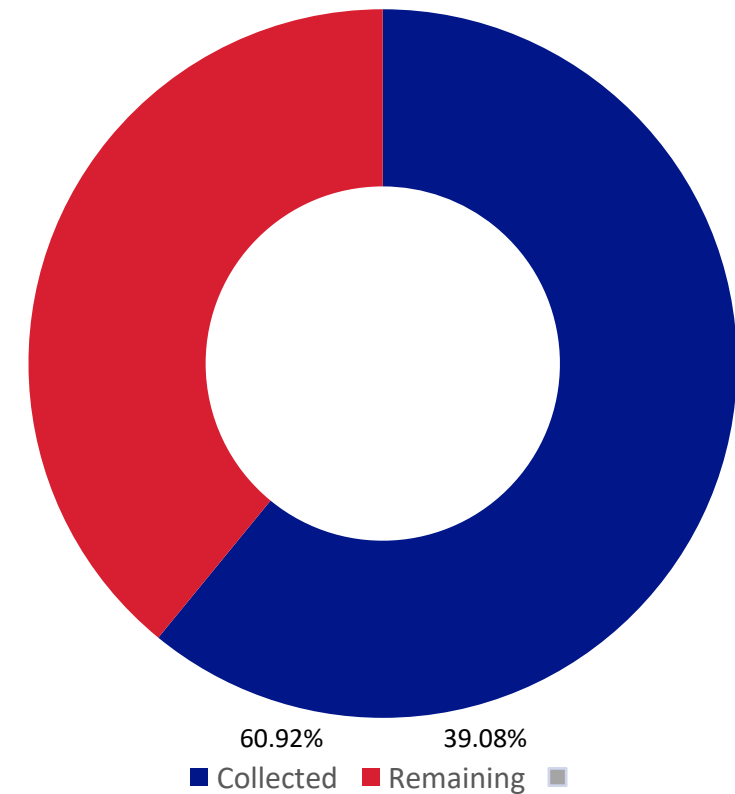
2019 TAX YEAR – DELINQUENT TAX COLLECTIONS

City of Nacogdoches

July 1, 2020 – June 30, 2021

Total Levy	• \$314,484
Base Tax Collected as of June 30, 2021	• \$191,587 • 60.92%
Base Tax Remaining as of June 30, 2021	• \$122,897 • 39.08%

2019 Tax Collections



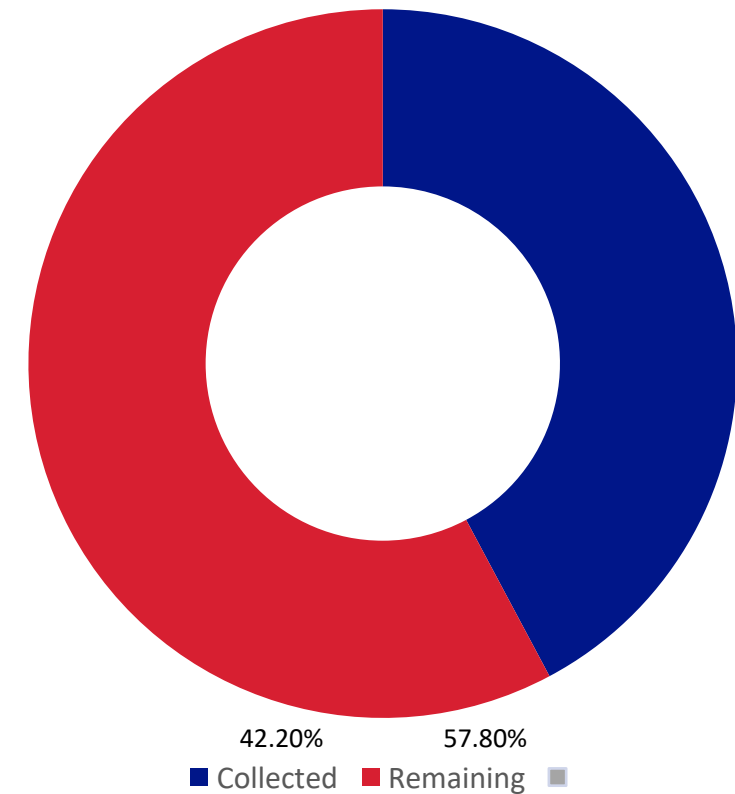
ALL YEARS – DELINQUENT TAX COLLECTIONS

City of Nacogdoches

July 1, 2020 – June 30, 2021

Total Levy	• \$720,609
Base Tax Collected as of June 30, 2021	• \$304,109 • 42.20%
Base Tax Remaining as of June 30, 2021	• \$416,500 • 57.80%

All Years Tax Collections



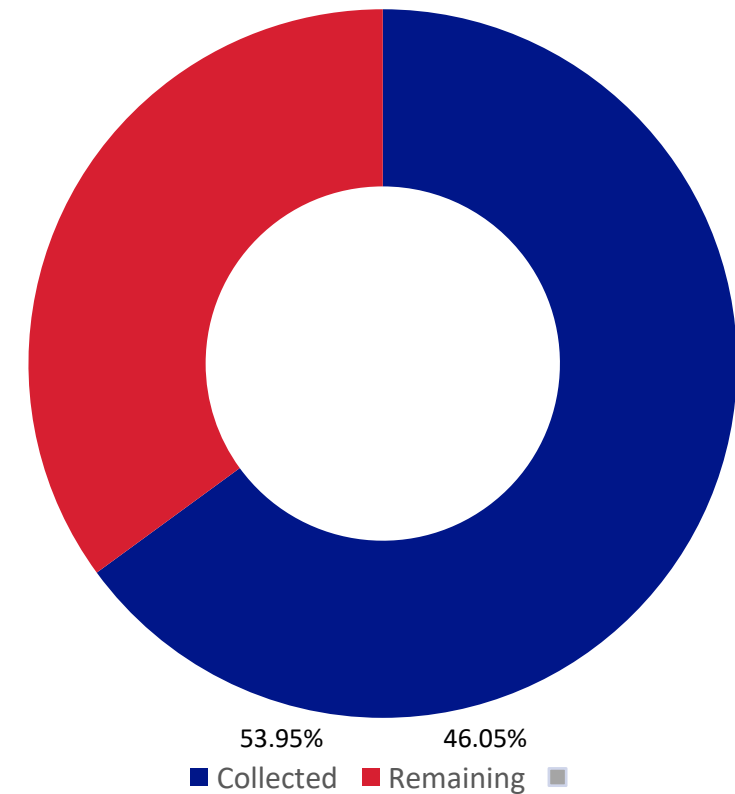
2020 TAX YEAR – DELINQUENT TAX COLLECTIONS

City of Nacogdoches

July 1, 2021 – March 31, 2022

Total Levy	• \$238,097
Base Tax Collected as of March 31, 2022	• \$128,464 • 53.95%
Base Tax Remaining as of March 31, 2022	• \$109,633 • 46.05%

2019 Tax Collections



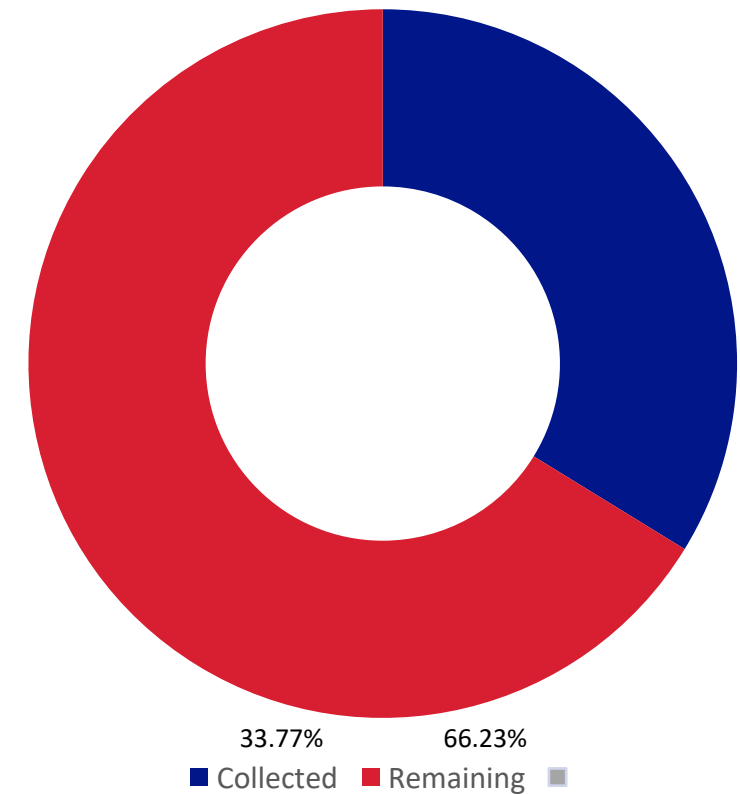
ALL YEARS – DELINQUENT TAX COLLECTIONS

City of Nacogdoches

July 1, 2021 – March 31, 2022

Total Levy	• \$654,596
Base Tax Collected as of March 31, 2022	• \$221,063 • 33.77%
Base Tax Remaining as of March 31, 2022	• \$433,533 • 66.23%

All Years Tax Collections

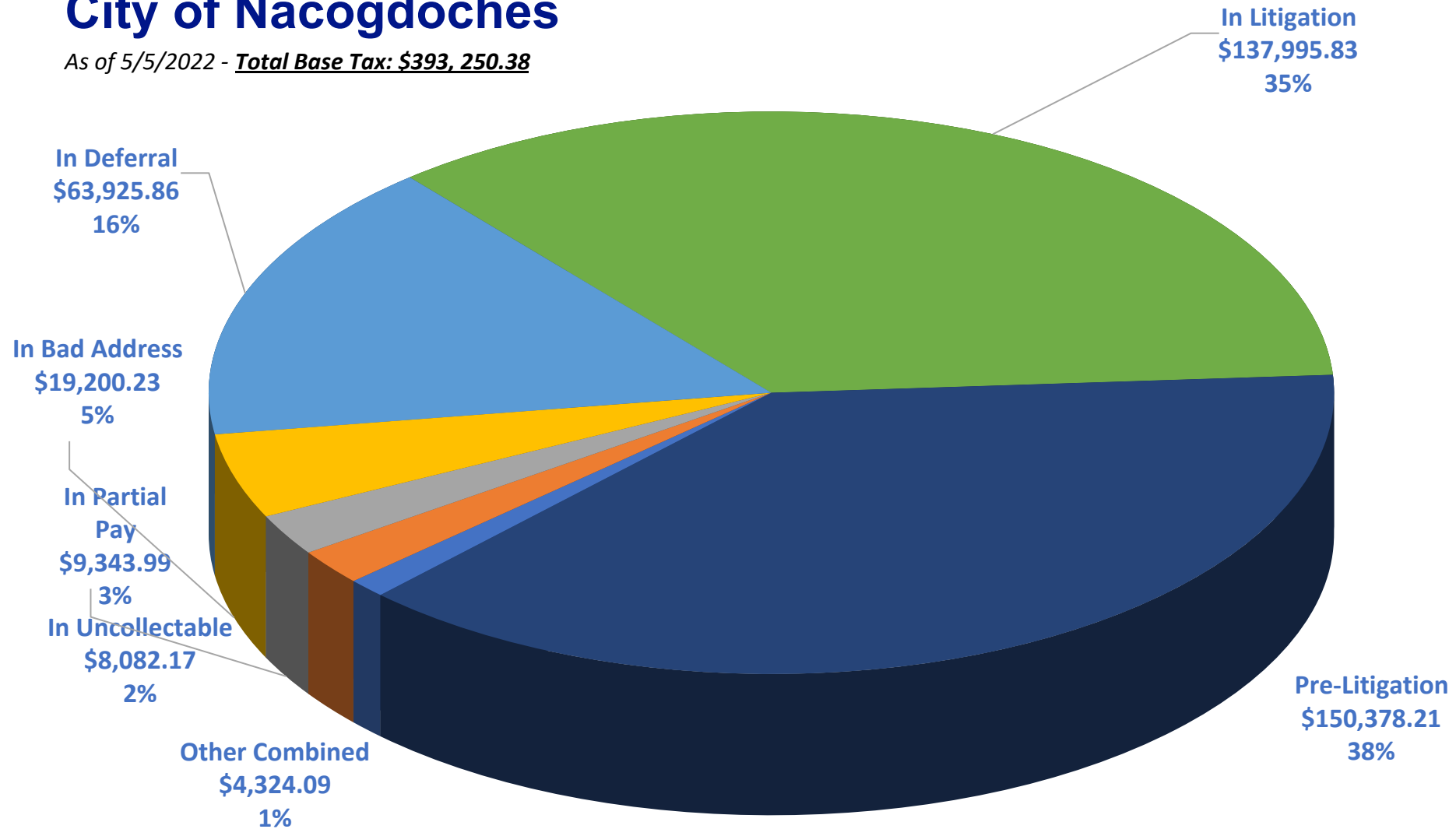




ACCOUNT BREAKDOWN

City of Nacogdoches

As of 5/5/2022 - **Total Base Tax: \$393,250.38**



Pre-Litigation activity includes notification letters, telephone collections, lienholder notification, title research, property inspection and hardship cases



Collection Activity FOR CITY OF NACOGDOCHES

	2021	2022
Original Petitions Filed	69	24
Properties Posted for Sale	11	3
Properties Paid Prior to Sale	7	0
Properties Sold	2	1
Properties Re-Sold	7	0

Note: Next sale date is June 7, 2022



Questions?

Patrick Woods

903-597-7664

pwoods@pbfcml.com

J. Douglas Burnside

972-278-8205

dburnside@pbfcml.com

www.pbfcml.com



PRESENTER: Steven Kirkland, City Attorney

ITEM/SUBJECT: Receive a report, hold a discussion and give staff direction on implementing a Tax Warrant Program. (City Attorney)

SUMMARY/BACKGROUND: At prior City Council meetings, staff presented reports on Code Enforcement issues and noted that many code enforcement sites are also tax-delinquent properties. In many instances, the cost of maintaining the property and paying the taxes exceeds the value of the property. Texas Tax Code 33.920 allows municipalities and counties to apply to a District Court for a warrant to obtain expedited foreclosure of tax delinquent abandoned properties. Once the properties are foreclosed, they may be sold at public auction. Some properties may need demolition or other work to make them marketable.

This Tax Warrant Program is available to properties where the tax collector determines ... that the sum of all outstanding tax and municipal claims against the property plus the estimated costs of a standard judicial foreclosure exceed the anticipated proceeds from a tax sale.

The property:

- 1.) Must be in the City limits;
- 2.) Must be less than one acre in size;
- 3.) Must have been abandoned, unused, and vacant for at least one year; and
- 4.) Must have five years of delinquent taxes assessed against it, or three years if there is also nuisance abatement lien on the property.

A property is presumed to have been abandoned for at least one year if, during that period, the property has remained vacant and a lawful act of ownership of the property has not been exercised. "Vacancy" is defined as "...an absence of any activity by the owner, a tenant, or a licensee related to residency, work, trade, business, leisure, or recreation." "Lawful act of ownership" includes mowing or cutting grass or weeds, repairing, or demolishing a structure or fence, removing debris, or other form of property upkeep or maintenance performed by or at the request of the owner of the property.

At prior meetings, staff also talked about using this program in conjunction with a land bank to jump start an affordable housing initiative. At this time, staff will not recommend the land bank option due to restrictions in the statutory framework for landbanks. Staff will recommend implementing the Tax Warrant Program and augmenting the current marketing for tax foreclosure properties.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE

FOLLOWING CITY COUNCIL PRIORITIES

Neighborhood Revitalization and Attainable Housing

CITY CONTACT: Steven Kirkland, City Attorney
kirklands@nactx.us
936-559-2505

ATTACHMENTS:

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Specific Use Permit for an Accessory Apartment, for Lot 3, City Block 4, located at 504 North Mound Street. This request has been submitted by Michael & Marianne Elliott Keller. Case File SUP2022-02. (City Planner)

SUMMARY/BACKGROUND: The request is for a Specific Use Permit (SUP) for an Accessory Apartment at 504 North Mound Street. The property is zoned R-2, Single Family, and is developed as a single family residence with a detached garage. The property is also located in the Washington District Historical Overlay. Per the Zoning Ordinance, an Accessory Apartment is allowed in the R-2, Single Family zoning district with approval of an SUP. The SUP process allows staff, the Commission, and the City Council the opportunity to review and impose conditions if necessary on such development.

The purpose of the request is to add a small apartment unit to an existing detached garage behind the main home. The garage is approximately 750 square feet in size, with an attached 180 square foot open storage area. The applicant is proposing to expand the structure and add a one-bedroom 750 square foot apartment on the north side. There will be no separate utility meters or connections for the new dwelling unit. The applicants have stated that they plan to use the accessory apartment for their adult child.

Adjacent Land Use & Zoning

The subject property is zoned R-2, Single Family and is currently developed as Single Family Residential. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North	Single Family Residential	R-2, Single Family	Single Family
South	Single Family Residential	R-2, Single Family	Single Family
East	Single Family Residential	R-4, Multi Family	Single Family
West (across from N. Mound St.)	Public	R-2, Single Family	Public Elementary School

The surrounding areas are zoned and developed as single family residences, with the exception of an elementary school to the west across N. Mound Street. Properties to the east are zoned R-4, Mutli-Family and also developed as single family residences. All of the surrounding properties are located in a Historic Overlay District. The proposed SUP will not change the uses permitted under the current R-2 zoning district.

REVIEW CRITERIA: Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for a Specific Use Permit:

Compatibility: The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The proposed accessory apartment is to be attached to an existing detached garage and located behind the main home. The property is approximately 1.3 acres, and the R-2 zoning district permits one dwelling unit per 0.14 acres. The addition of the accessory dwelling unit will not significantly affect the density of the neighborhood, and thus is compatible with the surrounding single family properties.

This property is also located in the Washington Historic Overlay (HO) District. Properties within an HO District must first obtain a certificate of appropriateness from the Nacogdoches Historic Landmark Preservation Committee (HLPC) prior to carrying out any exterior reconstruction, alteration, or new construction. The HLPC met on Monday, April 4, 2022 to consider this request and voted to approve the proposal, including the proposed design and building materials.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property;
There is no surrounding vacant property.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

The subject property takes direct access from North Mound Street, a collector street which functions as primary access for the property and adjacent development. The roadway is adequate to accommodate the additional dwelling unit.

Drives and Parking: The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments;

The applicant is maintaining the garage which can accommodate two, covered off-street parking spaces. The driveway in front of the new Accessory Apartment is 18 feet wide which can accommodate parking for the accessory apartment as well as guest parking. No new driveways are proposed.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration;

The proposed Accessory Apartment will be one story and attached to the existing garage that is surrounded by an existing 6' wooden privacy fence.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties;

Outdoor lighting must meet the City's lighting ordinance restrictions, i.e. only downlighting, no spillover lighting onto neighboring properties.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided;

The property has several large mature trees in the front and back yard. Single family development is not required to comply with commercial district landscaping requirements.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan. The comprehensive plan Future Land Use Plan map calls for single family residential uses for this area, and the property and the rest of the street are already zoned and developed as single family residential uses.

NOTICES:

Of the 19 notices mailed to property owners within the 200 foot notification area, staff has received three (3) response forms in favor of the request. This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These include: a zoning sign located on the subject property; notices published on the City's webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

RECOMMENDATIONS:

P&Z Recommendation: The Planning & Zoning Commission considered this item at their regular meeting on May 9, 2022 and voted unanimously (4-0) to approve the request.

Staff Recommendation: Based on the above findings, Staff recommends approval of the Specific Use Permit for the subject property.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

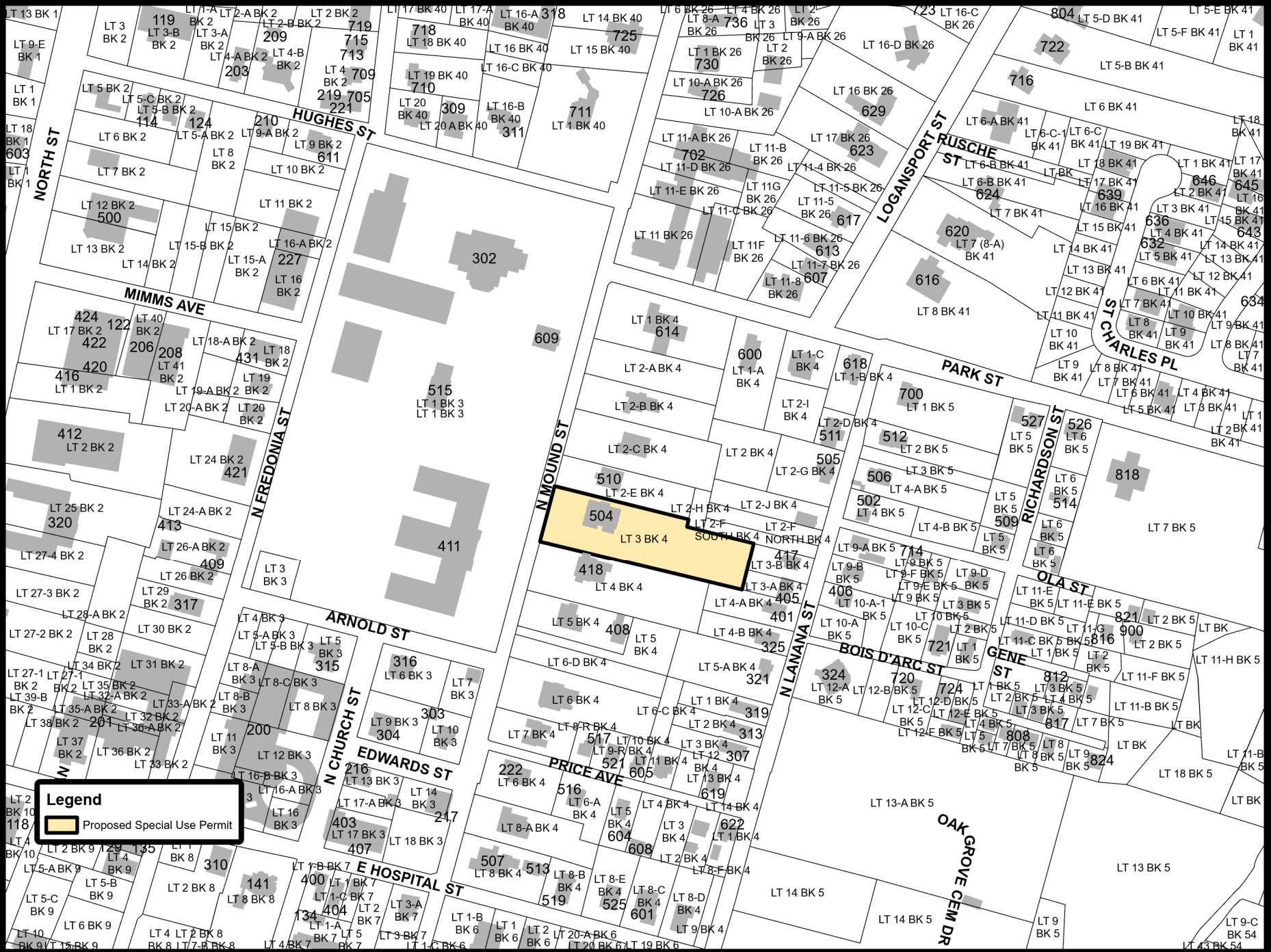
Not Applicable

CITY CONTACT: Alania Helton, AICP, City Planner
heltona@nactx.us
936-559-2572

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Historic Overlay Map
6. Notification Map
7. Response Forms
8. Site Plan & Elevations
9. HLPC Approval Letter
10. Site Photos
11. Ordinance

SUP 2022-02



Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

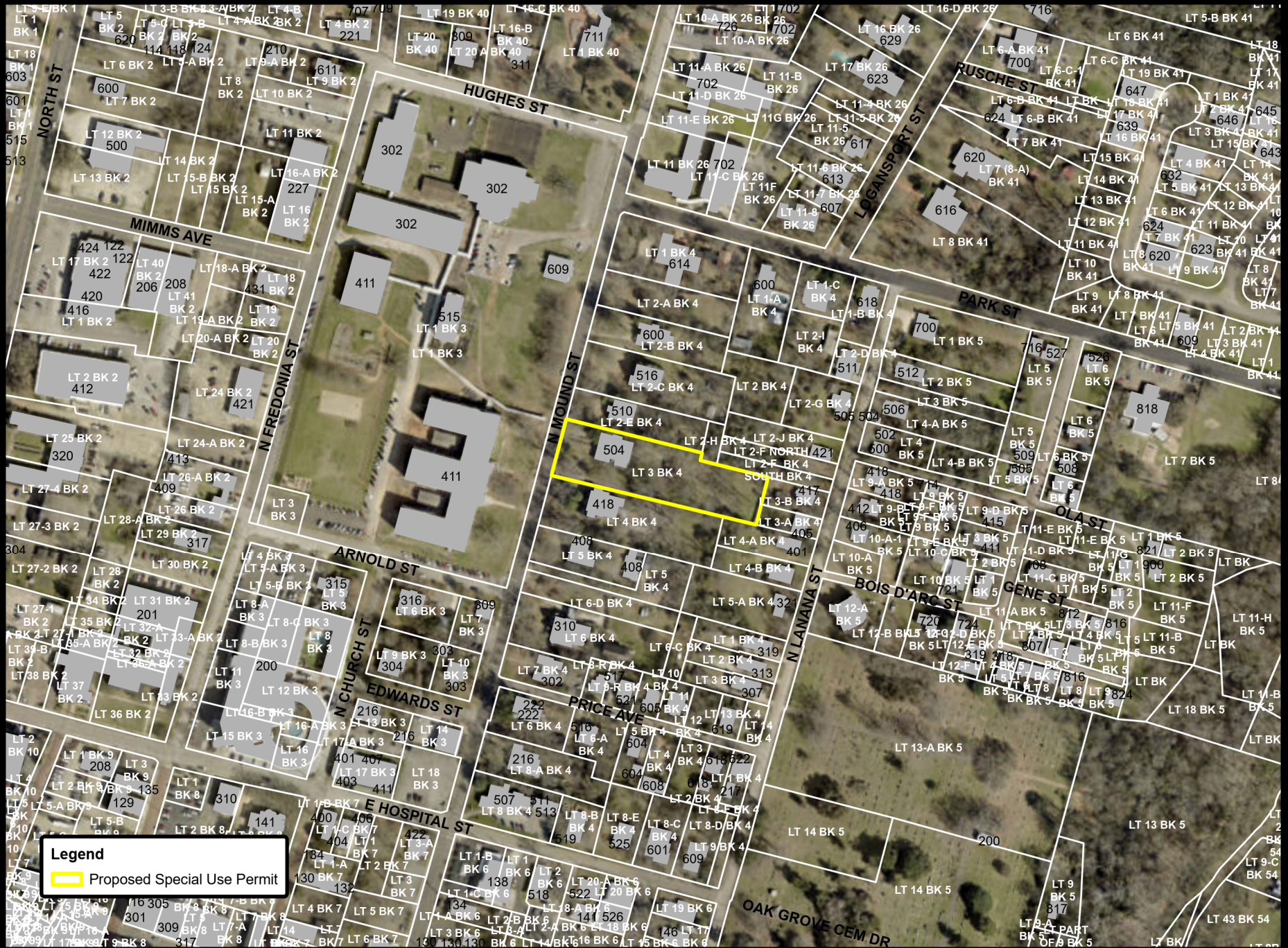


0 75 150 300 Feet

Date Created: April 4, 2022 Software: ArcGIS Pro 2.9.2



SUP 2022-02

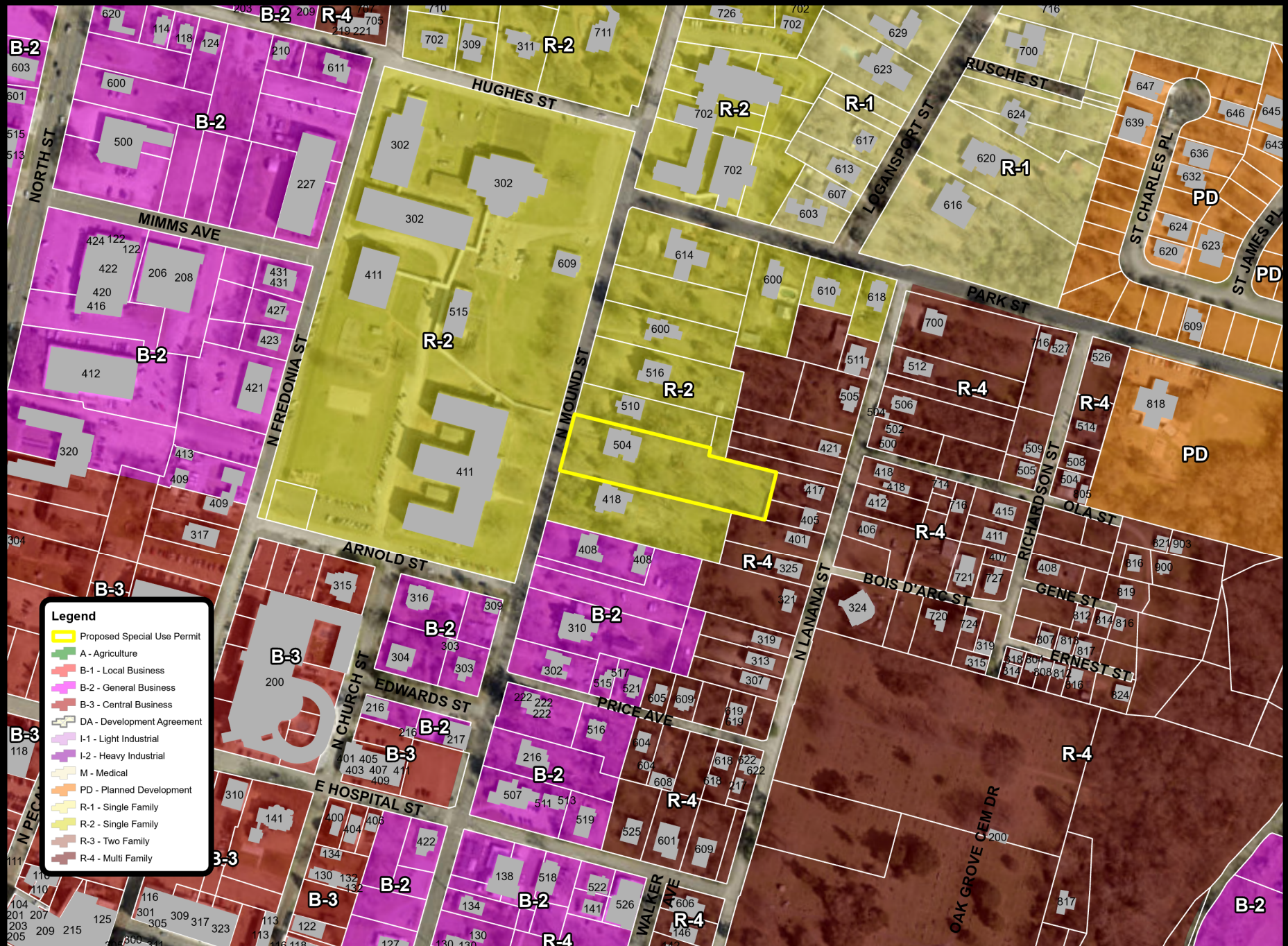


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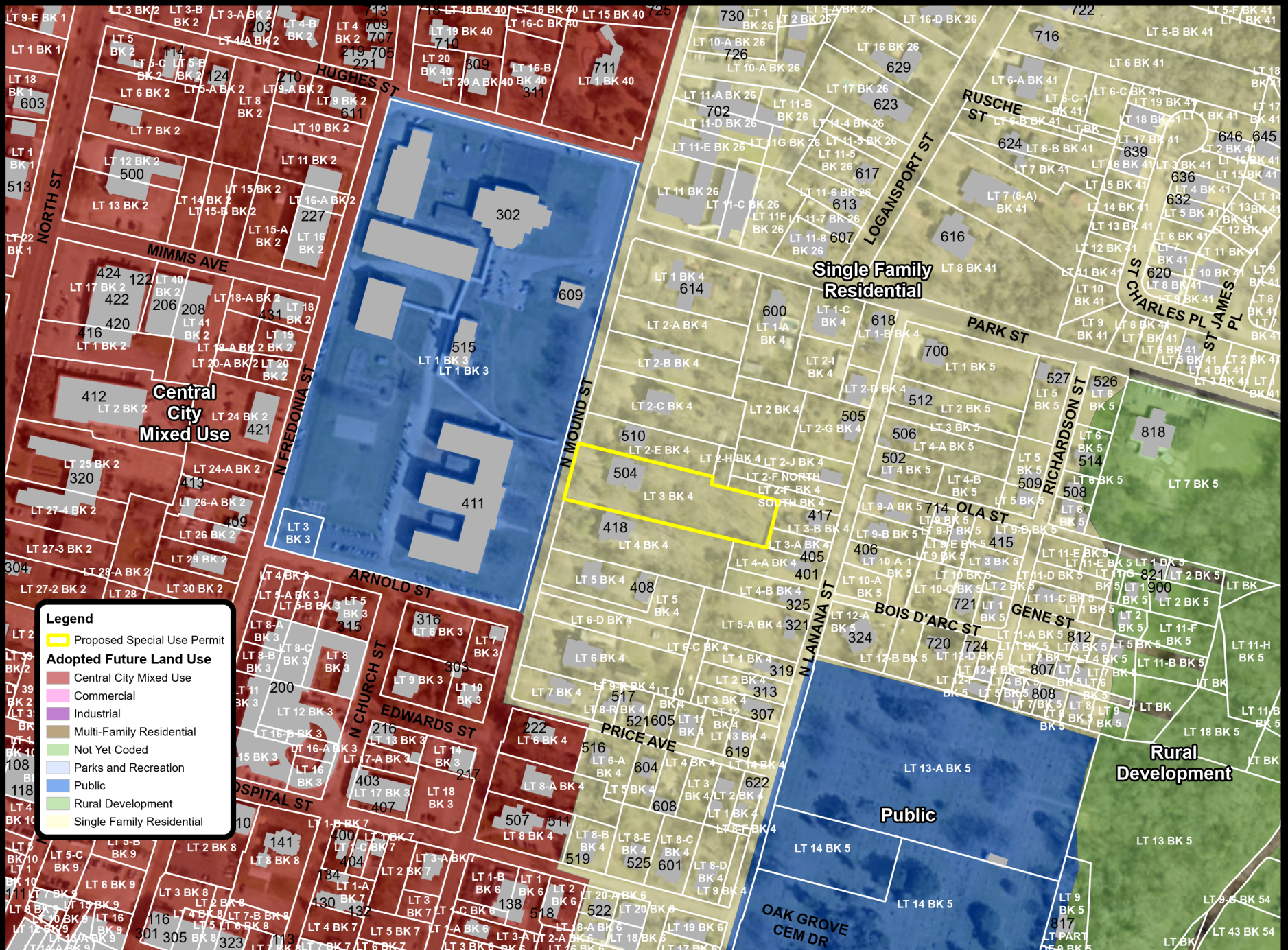


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0 75 150 300 Feet

Date Created: April 4, 2022 Software: ArcGIS Pro 2.9.2

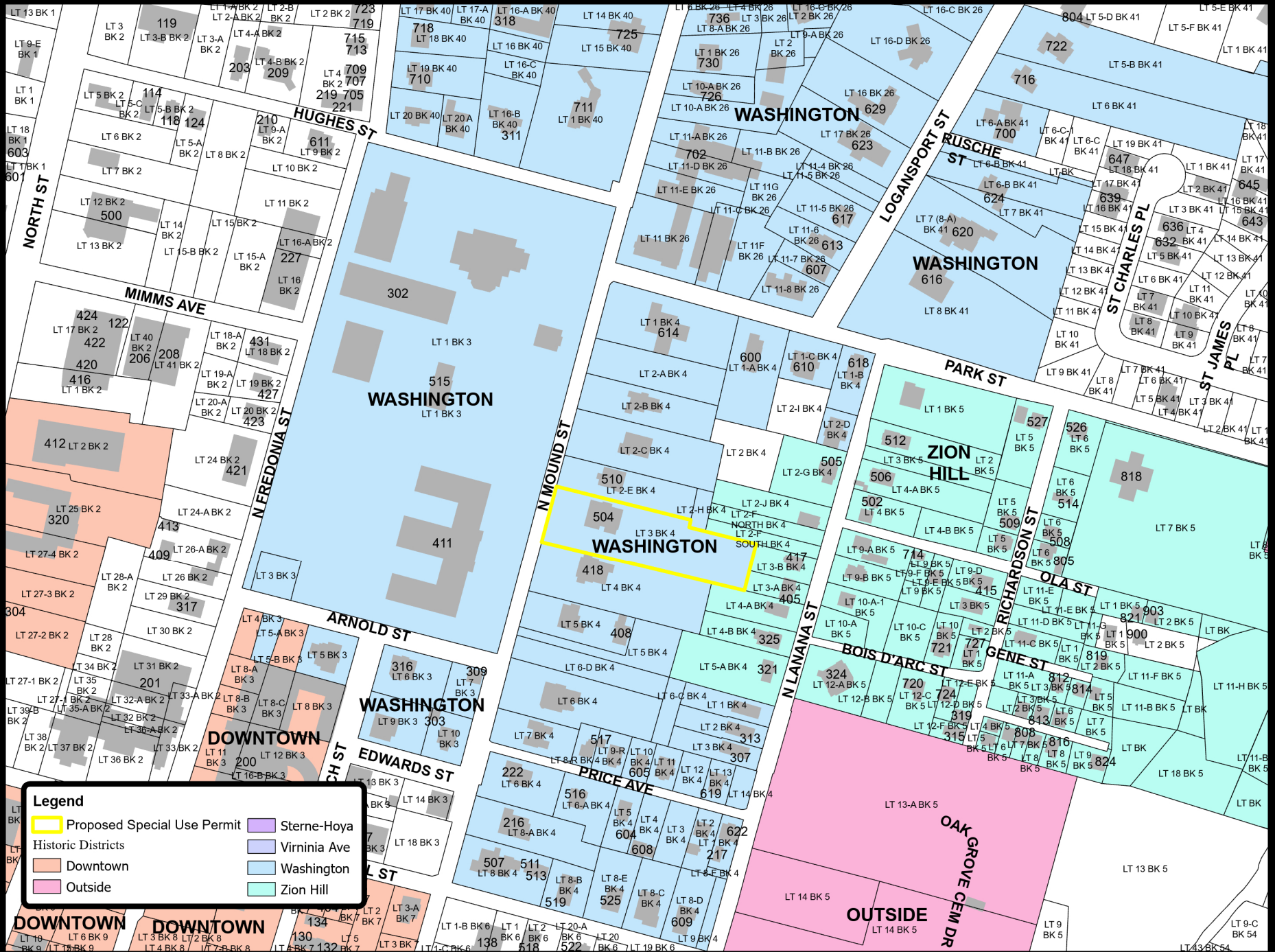


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0 75 150 300 Feet

Date Created: April 4, 2022 Software: ArcGIS Pro 2.9.2



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0 75 150 300 Feet

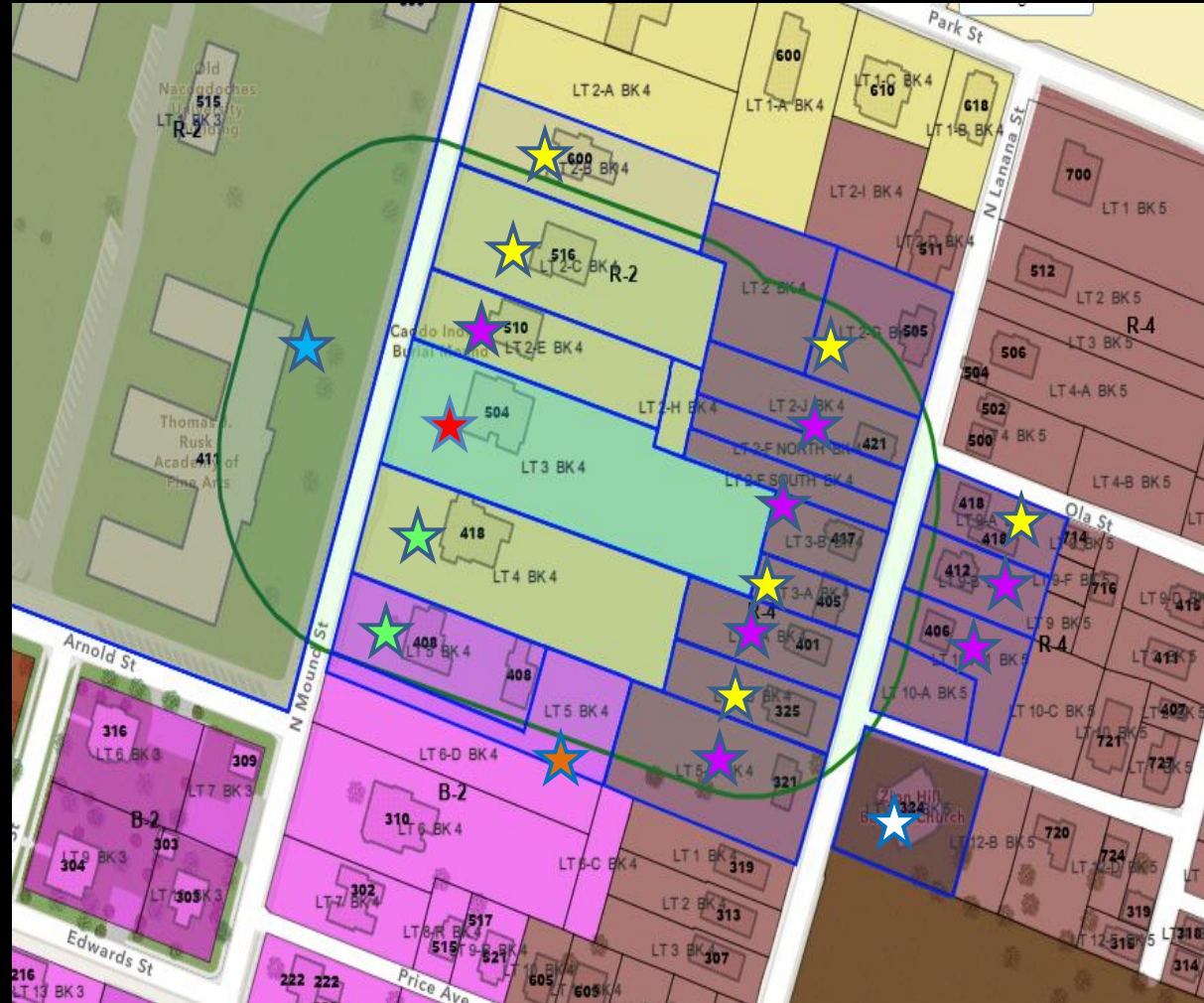
Date Created: May 6, 2022 Software: ArcGIS Pro 2.9.2

200 Foot Notification Map

Legend

-  200 Foot Buffer
-  Proposed Zone Change
-  Public School
-  Single Family- Rental
-  Single Family- Owner Occupied
-  Bed & Breakfast
-  Commercial
-  Church

SUP2022-02: 504 N. Mound St.





Response Form

Project Number: SUP2022-02

504 N. Mound Street

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department

Attn: Rhonda Lewis

PO Drawer 635030

Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisr@nactx.us

Project Number: SUP2022-02

Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

Signature: Becky Harris

Printed Name: BECKY HARRIS

Street Address: 600 N MOUND

City, State and Zip Code: NACOGDOCHES, TX 75961

Phone Number: 936 554-0969

Email Address: FORBLH@YAHOO.COM

Physical Address of Property within 200 Feet: 600 N MOUND

City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963

936-559-2574 Fax 936-559-2910 www.nactx.us

Home of Stephen F. Austin State University www.sfasu.edu



Response Form

Project Number: SUP2022-02
504 N. Mound Street

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department
Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisl@nactx.us

Project Number: SUP2022-02

Please circle one:



In favor of request



Opposed to request

Comments:

Signature: _____

Printed Name: _____

LYNN C MYERS

Street Address: _____

310 N MOUND ST

City, State and Zip Code: _____

NAC TX 75961

Phone Number: _____

830.708.7433

Email Address: _____

LYNNCMYERS@LIVE.COM

Physical Address of Property within 200 Feet: _____

SAME AS ABOVE

City of Nacogdoches

202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963
936-559-2574 Fax 936-559-2910 www.nactx.us
Home of Stephen F. Austin State University www.sfasu.edu



Response Form

Project Number: SUP2022-02
504 N. Mound Street

You may make your views known by completing this form and returning it to the Planning & Zoning department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department
Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisr@nactx.us

Project Number: SUP2022-02

Please circle one:

☒ In favor of request

☐ Opposed to request

Comments:

Signature:

Printed Name: Quilhan C. Jordan

Street Address: 408 North Mound

City, State and Zip Code: Nacogdoches, Texas 75961

Phone Number: 936-615-0955

Email Address: CHAP @ Suppen Link . net

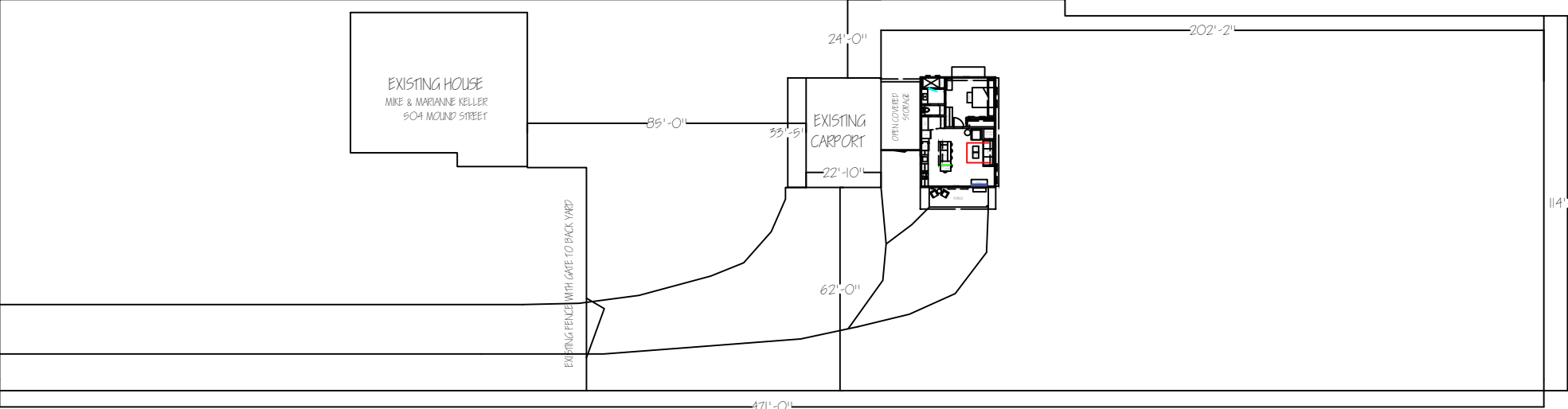
Physical Address of Property within 200 Feet: _____

City of Nacogdoches

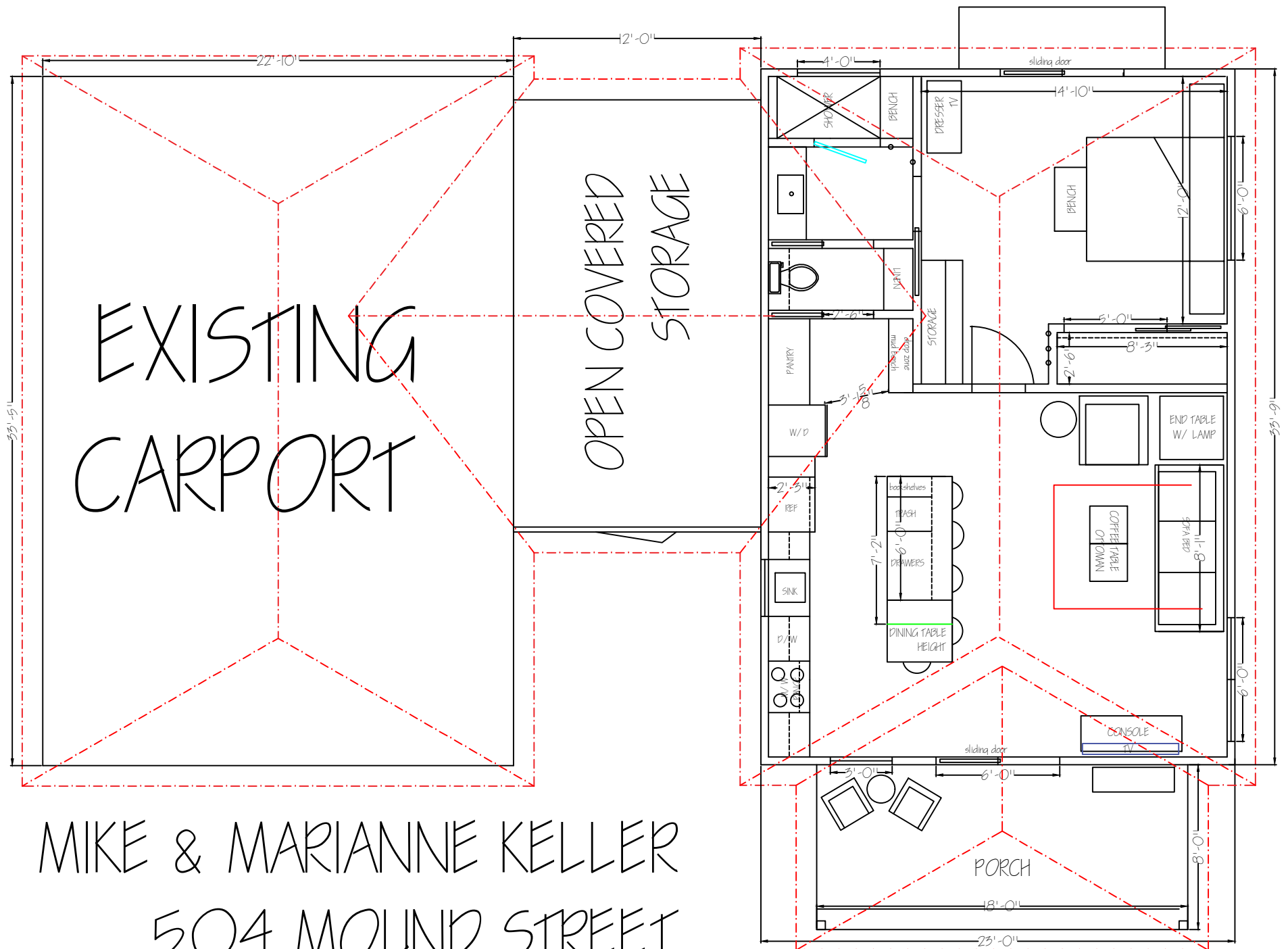
202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963
936-559-2574 Fax 936-559-2910 www.nactx.us
Home of Stephen F. Austin State University www.sfasu.edu

WEST - NORTH MOUND STREET

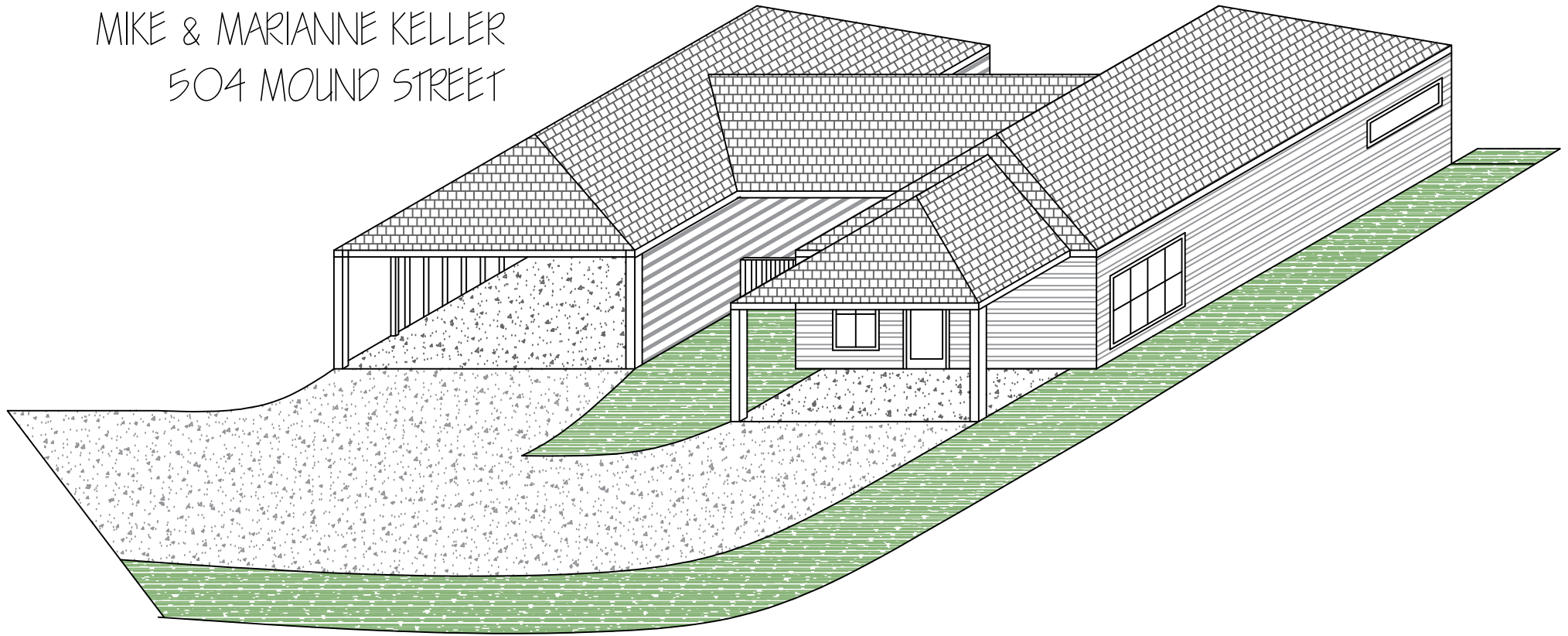
NORTH - 510 N MOUND STREET

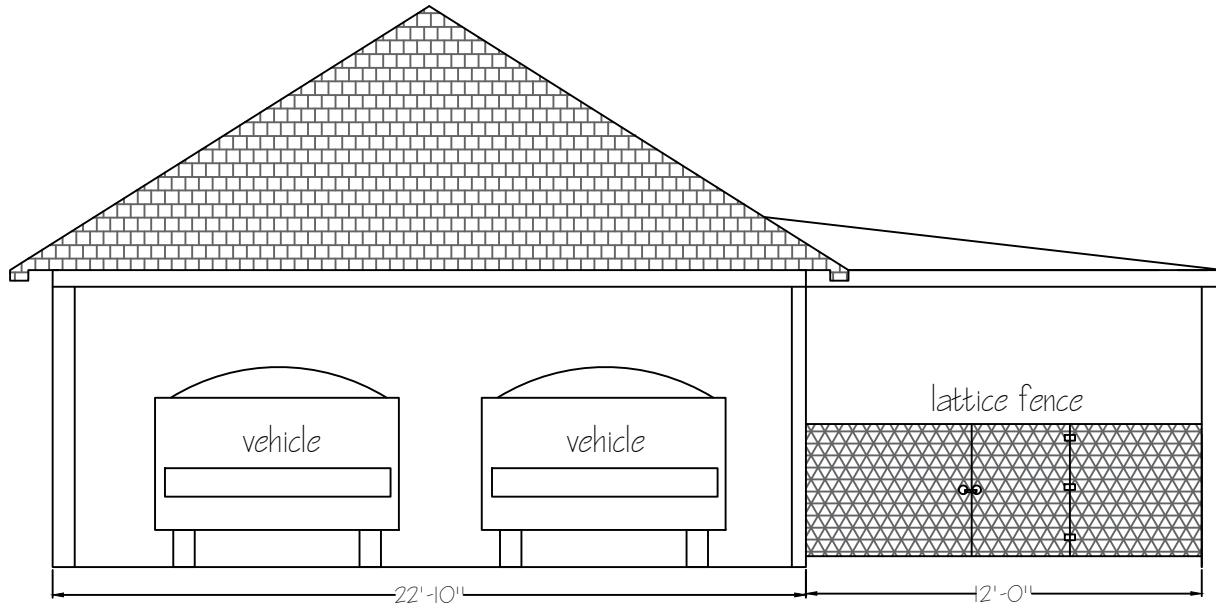


SOUTH - 418 N MOUND STREET MOCKINGBIRD SUITES

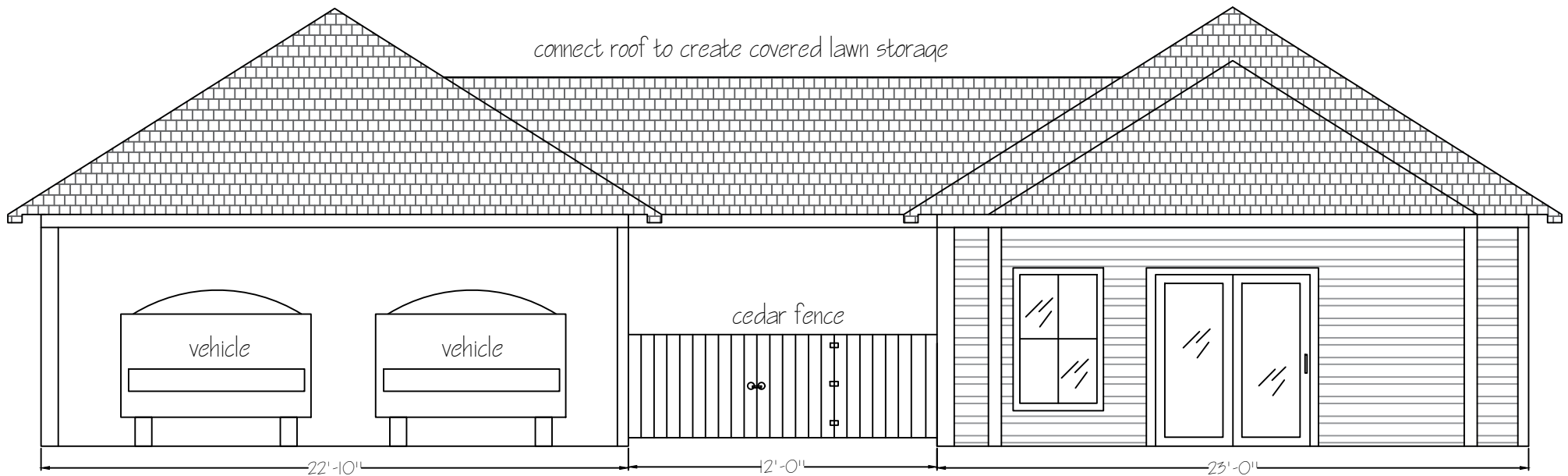


MIKE & MARIANNE KELLER
504 MOUND STREET





EXISTING CARPORT



EXISTING CARPORT

LIVING QUARTERS ADDITION



NACOGDOCHES HISTORIC LANDMARK PRESERVATION COMMITTEE

April 6, 2022

Mike & Marianne Keller
504 N. Mound
Nacogdoches, TX 75961

RE: Nacogdoches Historic Landmark Preservation Committee meeting
April 4, 2022 - COA 2022-001

Dear Mr and Mrs. Keller:

This is notice that the Nacogdoches Historic Landmark Preservation Committee met on Monday, April 4, 2022 to consider your request for a Certificate of Appropriateness for 504 N. Mound St. After hearing the comments of those attending the meeting, the Nacogdoches Historic Landmark Preservation Committee voted to **approve** your request to construct a new one-bedroom apartment attached on the East side of the existing carport located behind the house. The new addition will have hardie plank siding, a shingled roof and vinyl windows.

If you need any further assistance from the city, please contact the City of Nacogdoches Division of Community Services at (936) 559-2960.

Respectfully,

The Nacogdoches Historic Landmark Preservation Committee

Brian W. Bray
Community Services Director,
Historic Preservation Officer
brayb@nactx.us

cc: File
Jamie Carillo

SUP2022-02 Site Photos



Street view from
N. Mound St.



Existing carport and covered storage





Single family
to the north
on Mound St.



Single family to
the south on
Mound St





Elementary
school &
museum to the
west across N.
Mound St.



ORDINANCE NO. 1912-05-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, GRANTING AN AMENDMENT TO A SPECIFIC USE PERMIT FOR AN ACCESSORY APARTMENT LOCATED WITHIN THE R-2, SINGLE FAMILY ZONING DISTRICT, BEING LOT 3, CITY BLOCK 4, LOCATED AT 504 NORTH MOUND STREET IN NACOGDOCHES, TEXAS, PROVIDING REQUIREMENTS AND CONDITIONS FOR SAID SPECIFIC USE PERMIT; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Specific Use Permit process allows the Planning and Zoning Commission and City Council to consider the conditions specific to individual tracts of land and operational characteristics of various businesses; and

WHEREAS, Genuine BTM, LTD, filed an application for a Specific Use Permit for Recreational Vehicle Sales on property that is currently zoned as R-2, Single Family; located at 504 North Mound Street, said tract being legally described as Lots 3, City Block 4 (the "Property"), and situated within the corporate limits of the City of Nacogdoches, Texas (the "City"), being more particularly described in **Exhibit "A"** and **Exhibit "B"**, attached hereto and made a part hereof for all purposes; and

WHEREAS, the Owner of the Property, through its above mentioned and duly authorized representatives, has presented an application to the City for the granting a Specific Use Permit to use said Property for the purpose of an Accessory Apartment (the "Specific Use"), as authorized by the City's Zoning Ordinance; and

WHEREAS, after satisfaction of all conditions precedent required by law, the Planning and Zoning Commission held a public hearing and did make recommendation to City Council for approval of the Specific Use Permit application submitted for the above referenced site; and

WHEREAS, after satisfaction of all conditions precedent required by law and receiving the recommendation of the Planning and Zoning Commission, the City Council conducted a public hearing, and immediately thereafter approved the application for a Specific Use Permit allowing for the construction, operation and maintenance of an Accessory Apartment.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I
Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II
Approval of Specific Use Permit

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a Specific Use Permit is hereby approved allowing for the construction, operation and maintenance of an Accessory Apartment at the above described location, as outlined in “**Exhibit B**”.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting of the Specific Use Permit as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VII

Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

JAN VINSON, City Secretary

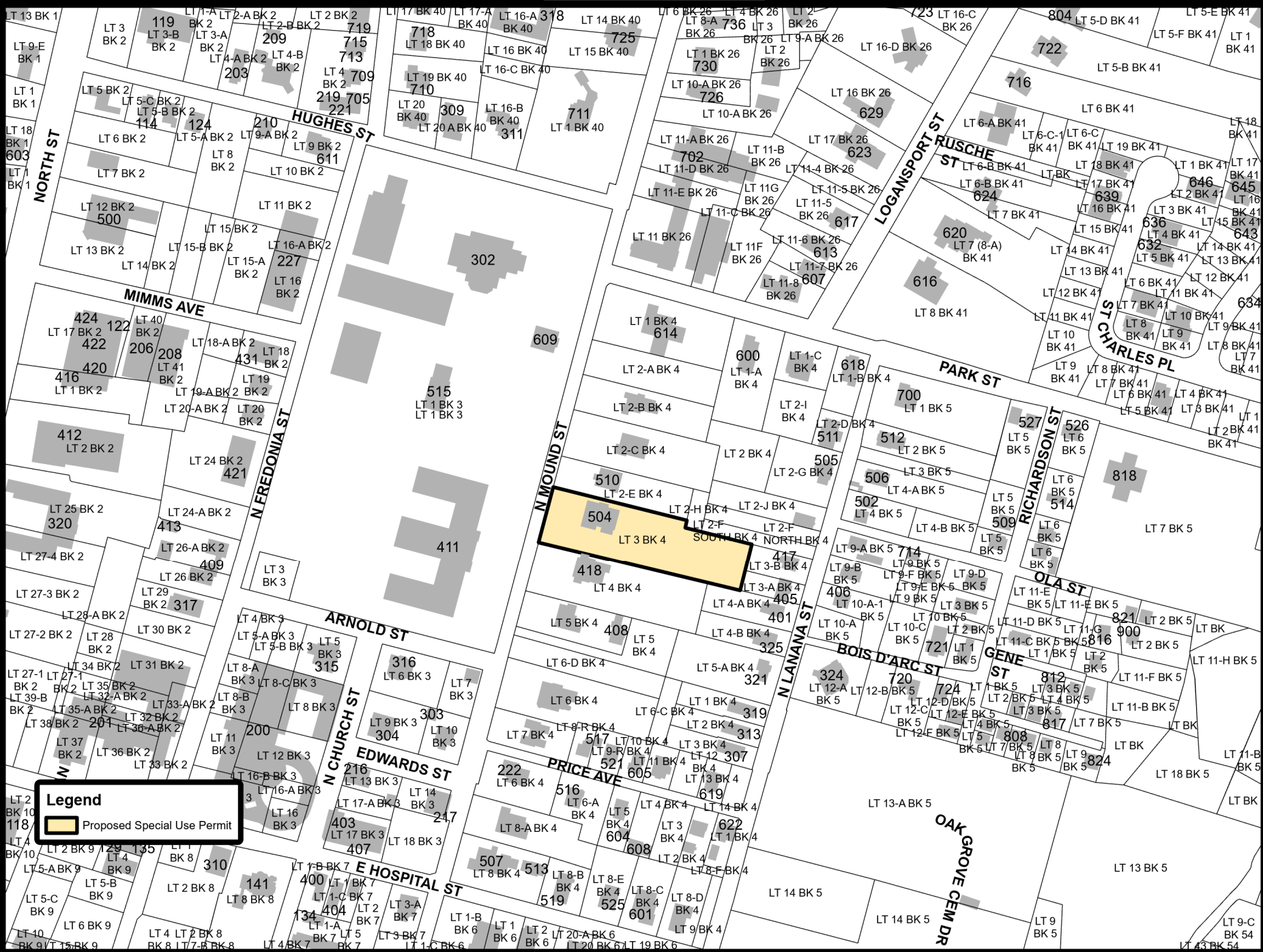
APPROVED AS TO FORM:

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

SUP2022-02: Exhibit A



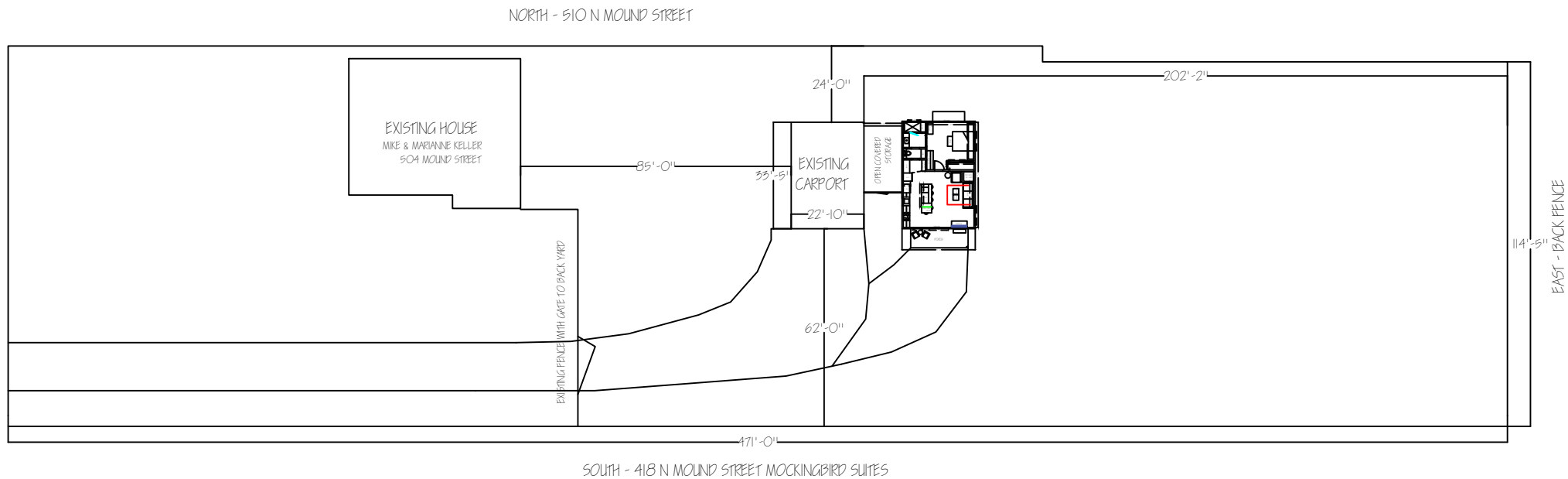
Notice: This product is for informational purposes only and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

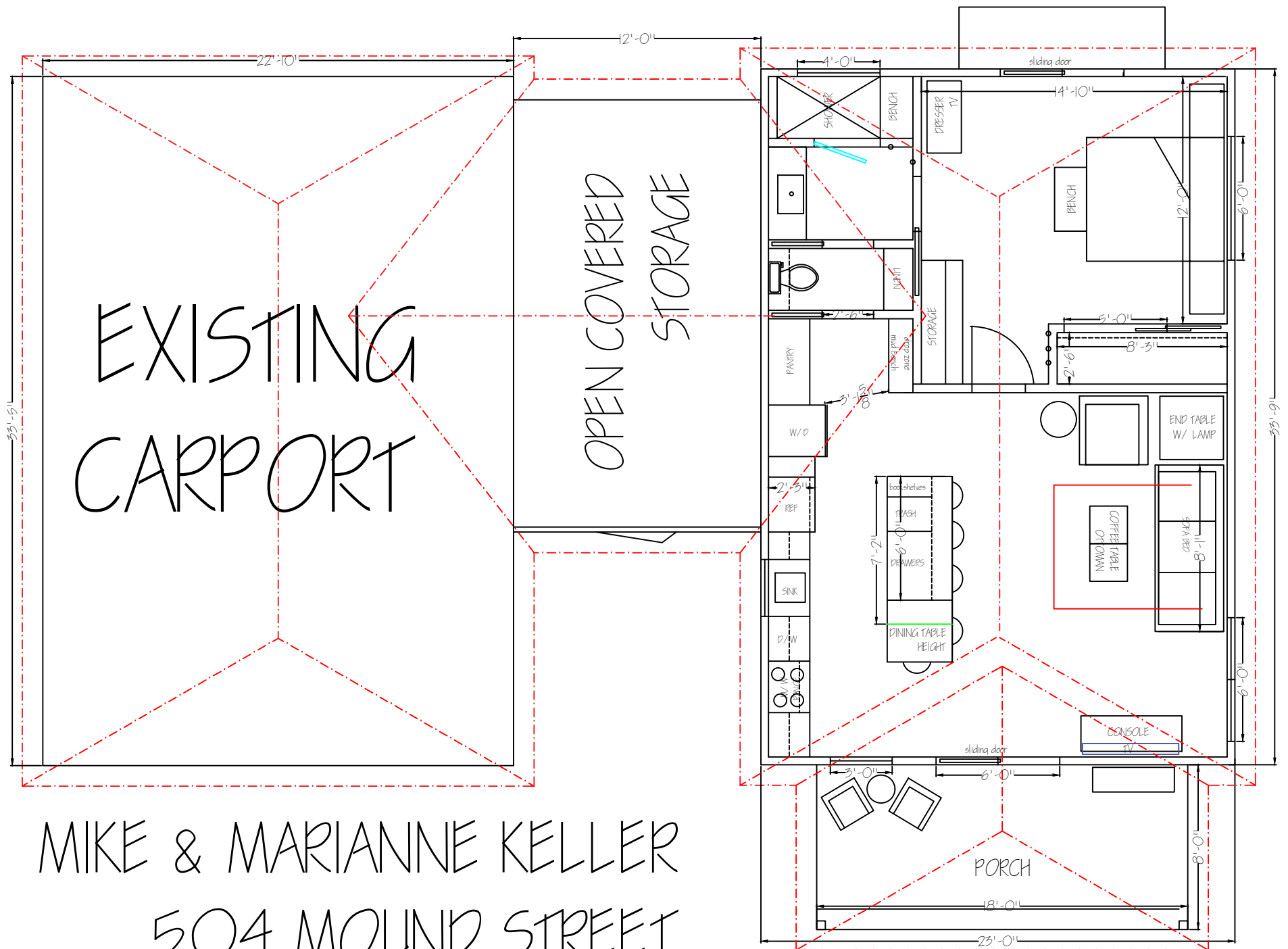


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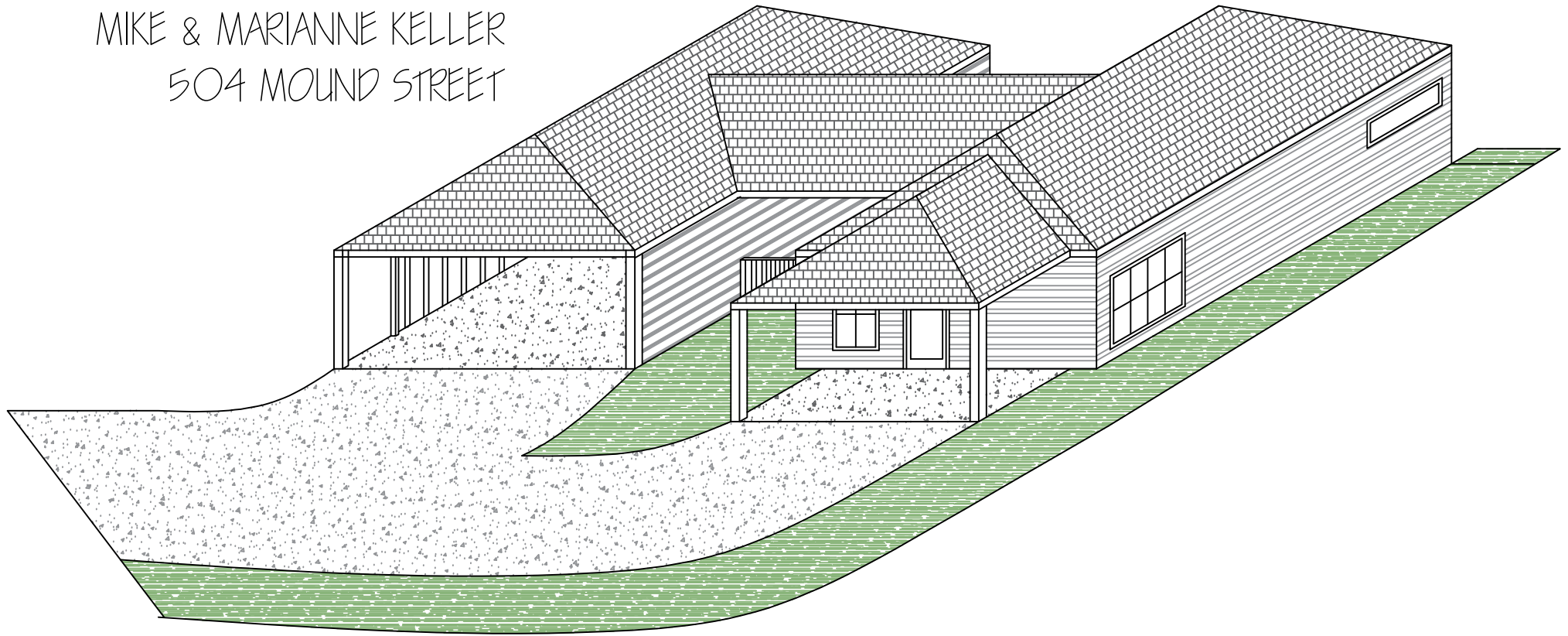
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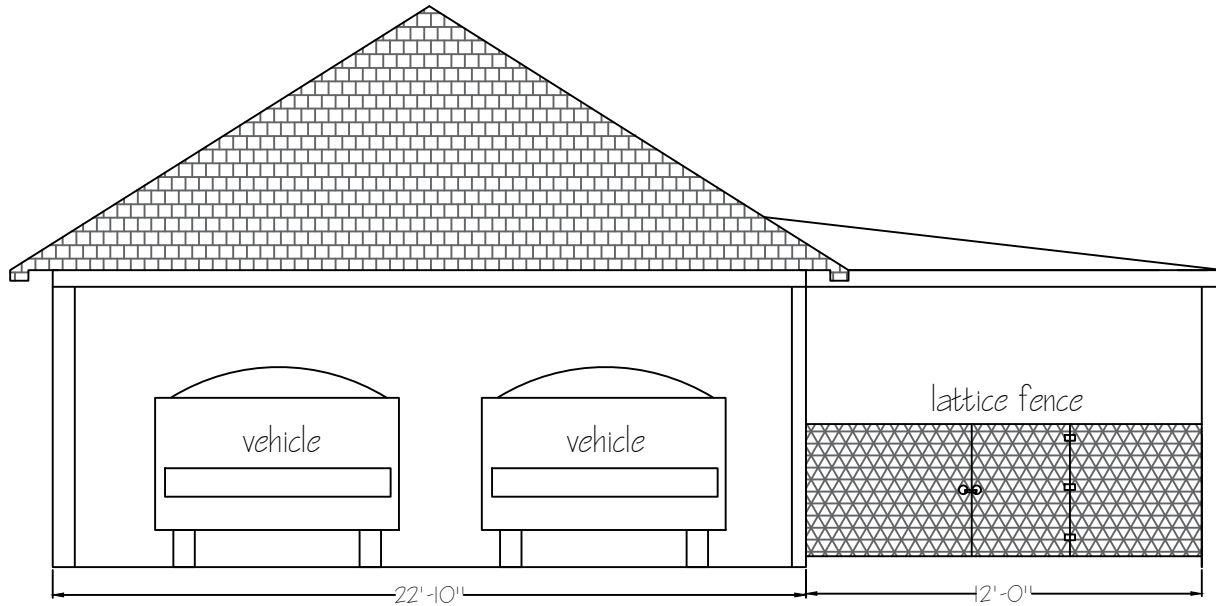




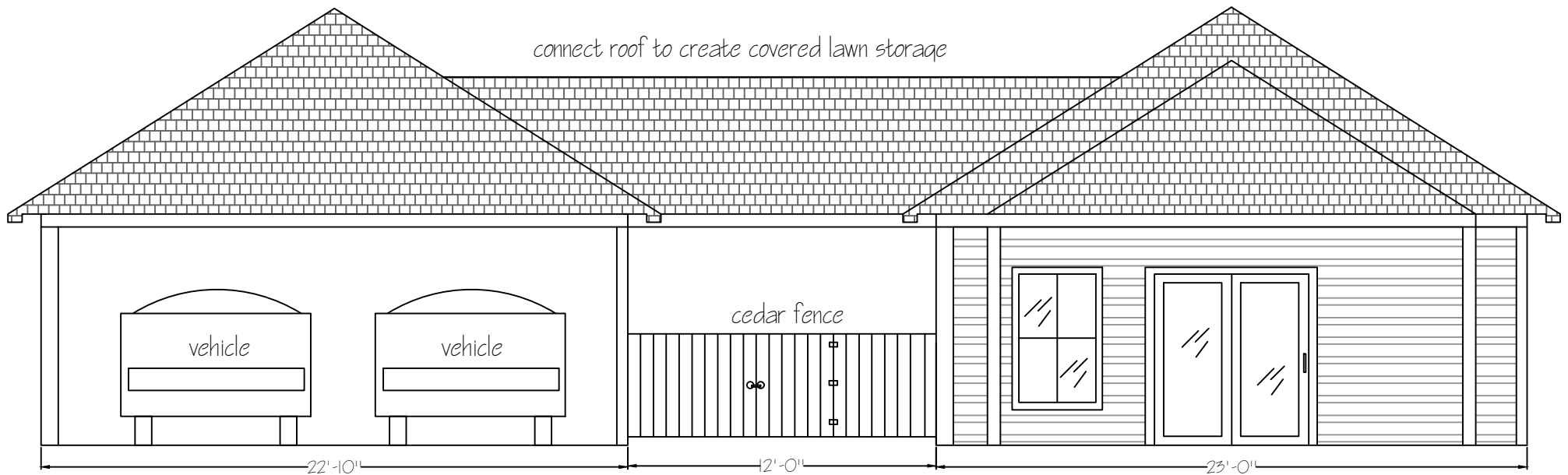


MIKE & MARIANNE KELLER
504 MOUND STREET





EXISTING CARPORT



EXISTING CARPORT

LIVING QUARTERS ADDITION

PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Zone Change from R-2, Single Family to R-3, Two Family for approximately 1.5 acres, being lots 1-10, of the Berger Hill Addition, generally located at the southeast corner of Nash and Dolph Street. This request has been submitted by Rolando Rodriguez. Case File ZON2022-04. (City Planner)

SUMMARY/BACKGROUND: The request is for a zone change from R-2, Single Family to R-3, Two Family for approximately 1.5 acres located at the southeast corner of Nash and Dolph Street. The R-3, Duplex Dwelling District creates a residential district which is appropriate for single-family housing and two-family housing. Lots in the R-3 district must be 5,000 square feet and larger. The applicant owns the subject properties, and intends to develop the vacant lots with a two-family (duplex) residences.

Adjacent Land Use & Zoning

The subject property is zoned R-2, Single Family and is currently undeveloped. The surrounding zoning and land uses are as follows:

Direction	Comprehensive Plan	Zoning	Land Use
North (Across Dolph St.)	Public	R-4, Multi Family	Elementary School
South (Across Powers St.)	Single Family Residential	R-2, Single Family	Single Family
East	Single Family Residential	R-2, Single Family	Single Family
West (Across Nash St.)	Single Family Residential	R-2, Single Family	Single Family & Church

The Berger Hill Subdivision area is primarily zoned R-2 and developed with single family residences. However, the property north of Dolph Street is zoned R-4, Multi-Family, and is developed with a public elementary school, single family, and multifamily structures located northwest of the subject property. The lots in this area are similar in size and configuration.

REVIEW CRITERIA: Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for zoning change:

Compatibility: The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The area is primarily zoned and developed with single family residences, with the exception of the R-4, Multi-Family district to the north that is developed with low-income housing and a

public elementary school. Duplex housing would not significantly impact the overall density of the neighborhood, and provide affordable housing in close proximity to a public school.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property; The surrounding properties are mostly developed with the exception of a vacant lot located south across Powers Street. The rezoning would not impede the orderly growth of adjacent properties.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided; The subject property takes direct access from Dolph, Powers and Nash Street. The property has access to public utilities, with 8-inch water and 6-inch sewer mains located along Dolph and Powers Street.

Drives and Parking: The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments; Future development will meet all current driveway and parking requirements.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration; Future development will comply with City regulations regarding the prevention of offensive odor, fumes, dust, noise and vibrations.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties; If the zone change request is approved, any new outdoor lighting would be subject to the City's current standards, which requires light fixtures to utilize a down lighting design, and prohibits fixtures that directly project light in all directions.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided; Single family construction is not subject to commercial district landscaping requirements.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan. Future Land Use Per the 2003 Nacogdoches Comprehensive Plan, the Future Land Use Plan (FLUP) Map designates the subject property as *Single Family Residential*. This FLUP category is described as, "Conventional one-family detached dwellings (also includes duplexes)."

Thoroughfare Plan Powers and Dolph Street are minor roads that serve as direct access for the other residential uses in the area. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use.

Land Use Policies, Goals & Objectives

This rezoning is a response to current needs for residential growth and therefore fits into the goals of the Comprehensive Plan; specifically, the goal to encourage *Growth Inward* – Long-term growth in appropriate areas to achieve an efficient, diverse and balanced pattern of land uses both within the City and urbanizing portions of its extraterritorial jurisdiction. Some of the targeted objectives include:

- Encourage infill development where appropriate (utilities, compatibility, etc.).

- Plan for mixing and/or separation of land use types based on desired location, density and pattern of development.
- Promote growth where adequate infrastructure exists.

This request also furthers the Land Use Policies of the 2003 Comprehensive Plan, specifically:

- Compatibility with existing uses should be maintained. Well planned, mixed uses which are compatible are to be encouraged.
- Schools, parks and community facilities should be located close to or within residential neighborhoods.

Staff finds that the request is in compliance with the FLUP and the stated Goals and Objectives of the 2003 Comprehensive Plan.

NOTICES:

Of the 17 notices mailed to property owners within the 200 foot notification area, staff received one (1) response in opposition to the zone change, citing the desire for more single family development. This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These include: a zoning sign located on the subject property; notices published on the City's webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

REDOMMENDATIONS:

P&Z Recommendation: The Planning & Zoning Commission considered this item at their regular meeting on May 9, 2022 and voted unanimously (4-0) to approve the request.

Staff Recommendation: Based on the above findings, Staff recommends approval of the zone change for the subject property.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

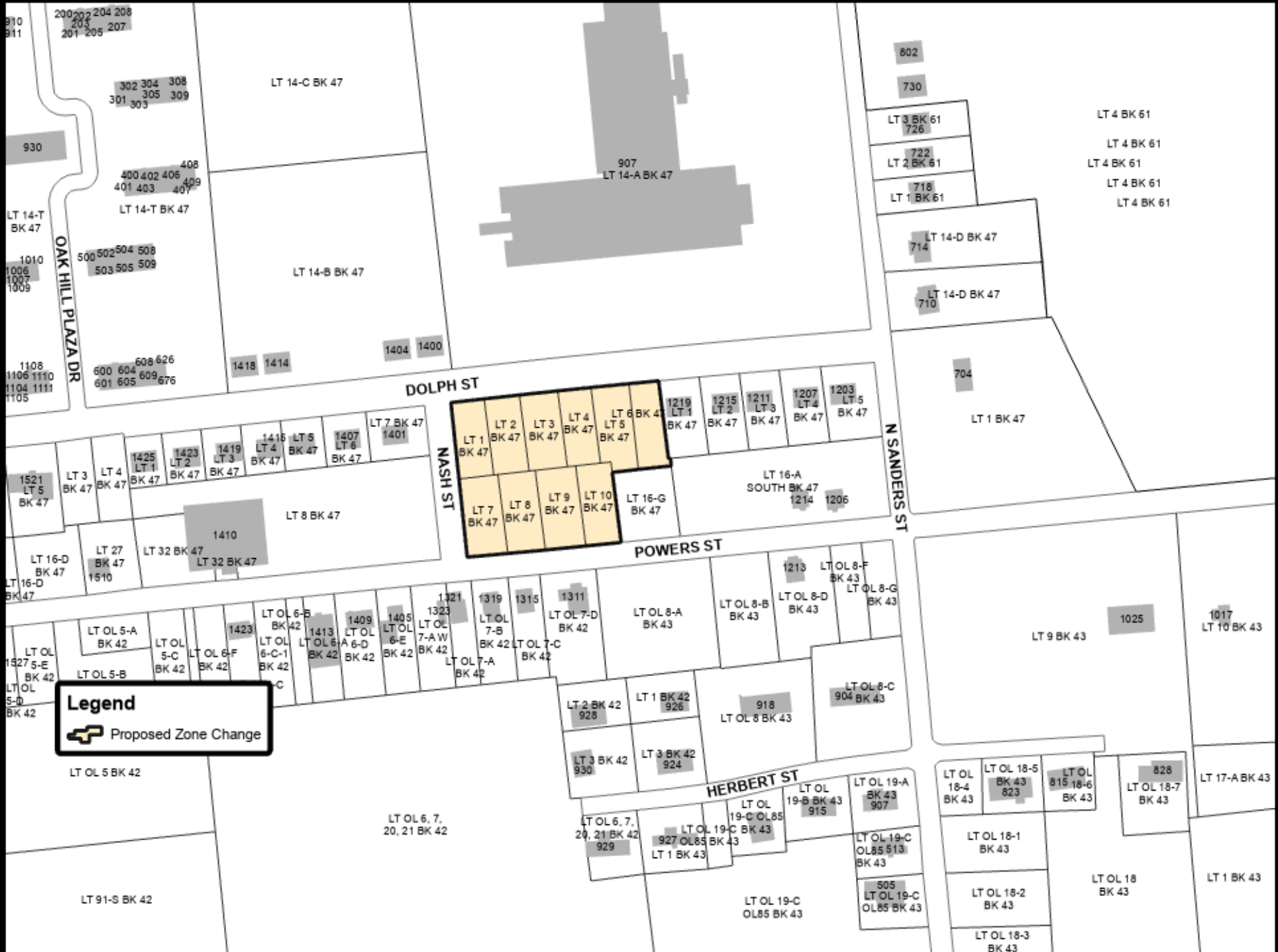
Neighborhood Revitalization and Attainable Housing

CITY CONTACT: Alaina Helton, AICP, City Planner
heltona@nactx.us
936-559-2572

ATTACHMENTS:

1. Location Map
2. Aerial Map
3. Zoning Map
4. Future Land Use Map
5. Notification Map
6. Response Form
7. Site Photos
8. Ordinance

ZON 2022-04



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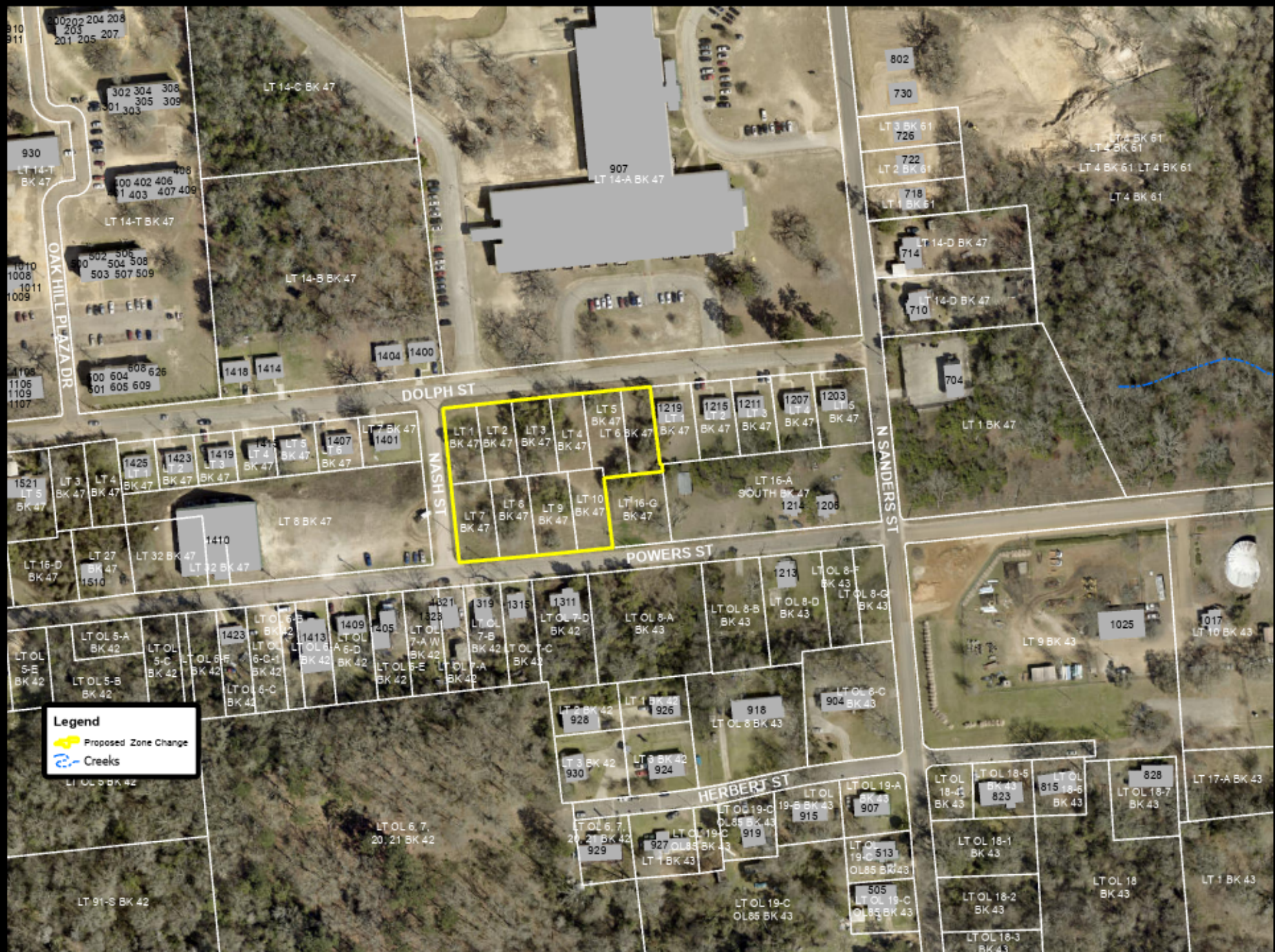


0 50 100 200 Feet

Date Created: April 20, 2022 Software: ArcGIS Pro 2.9.2



ZON 2022-04



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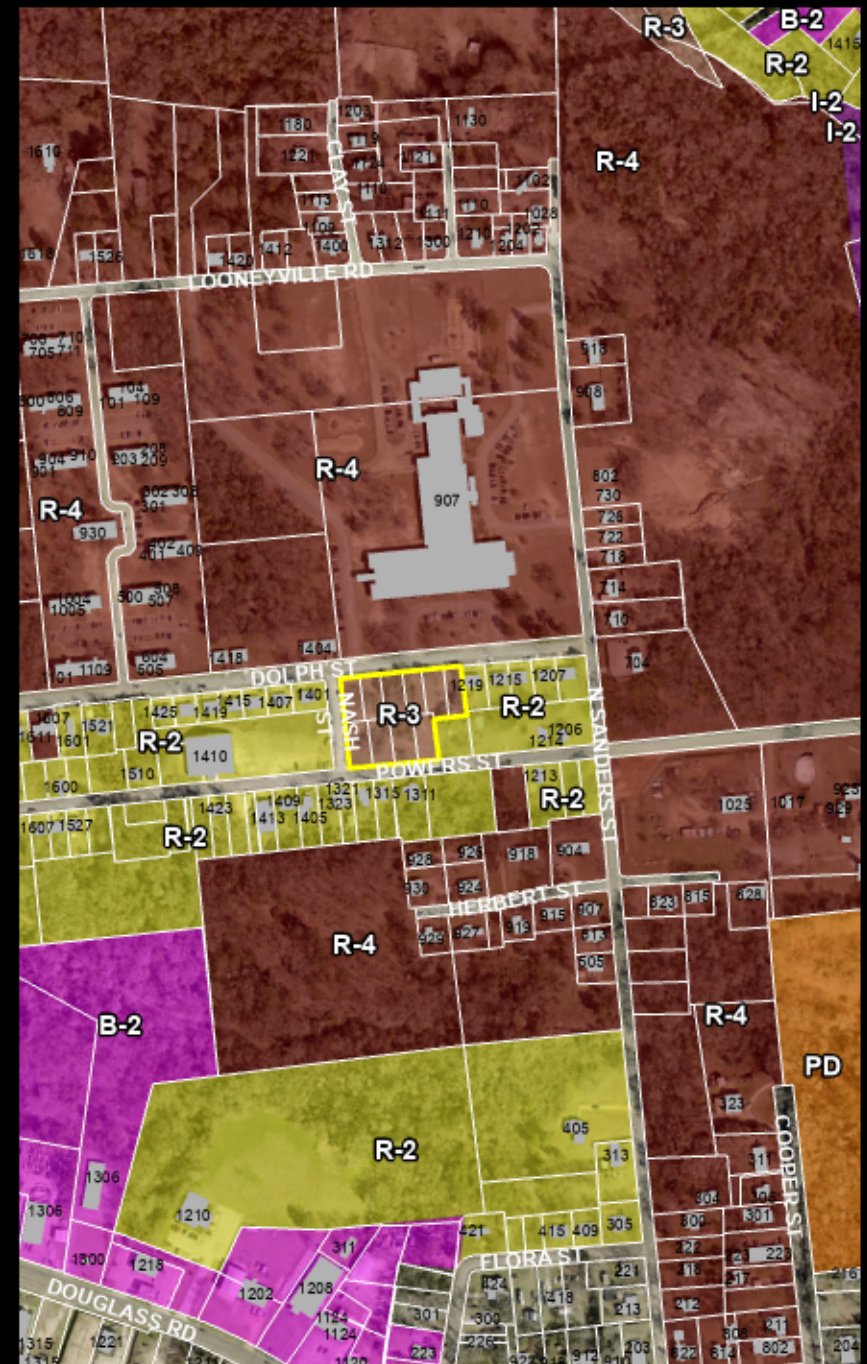
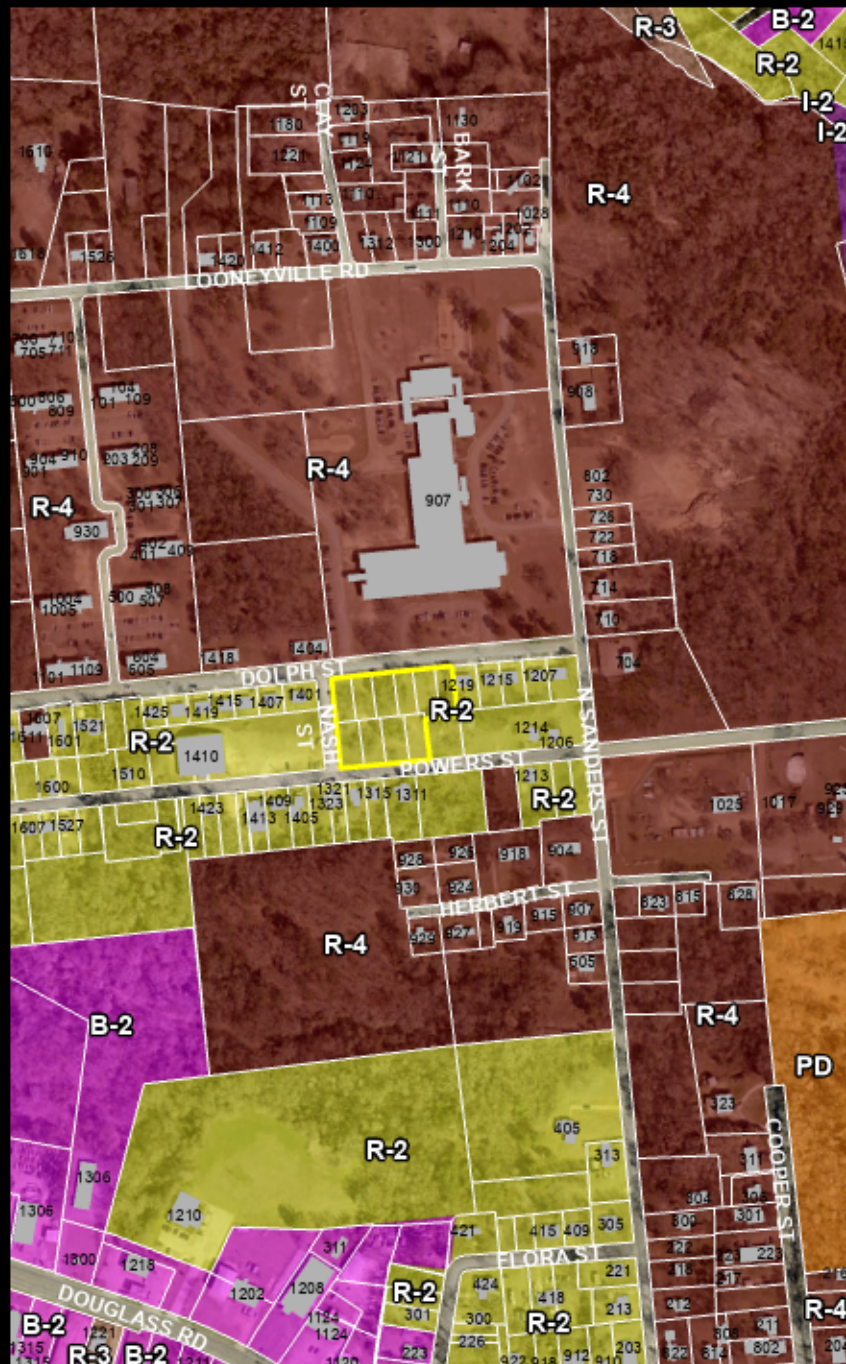
0 50 100 200 Feet

Date Created: April 19, 2022 Software: ArcGIS Pro 2.9.2

Existing Zoning

ZON 2022-04

Proposed Zoning



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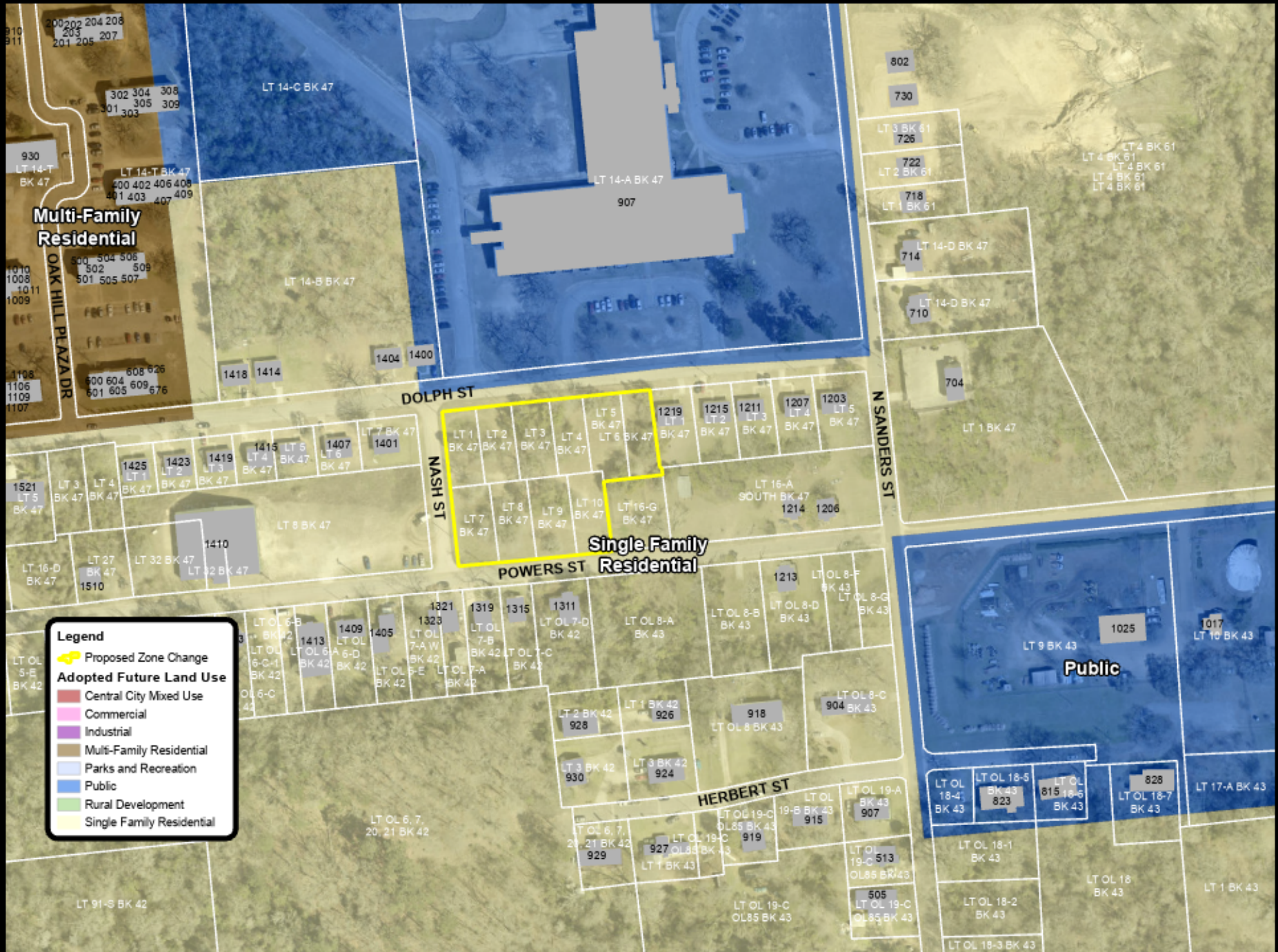


Date Created: April 20, 2022 Software: ArcGIS Pro 2.9.2

0 125 250 500 Feet



ZON 2022-04



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0 50 100 200 Feet

Date Created: April 20, 2022 Software: ArcGIS Pro 2.9.2

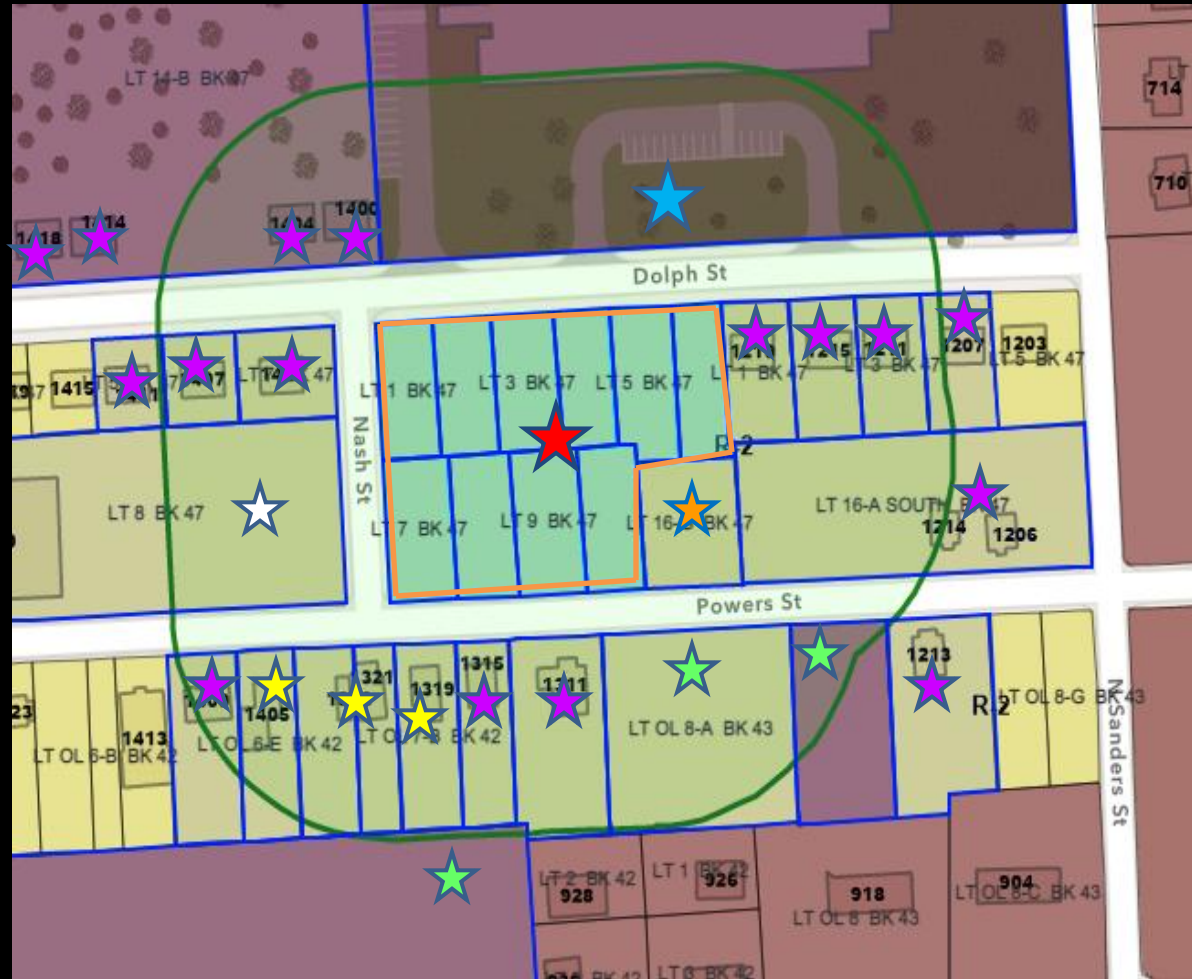


200 Foot Notification Map

Legend

-  200 Foot Buffer
-  Proposed Zone Change
-  Public School
-  Single Family- Rental
-  Single Family- Owner Occupied
-  Undeveloped
-  Church
-  City

ZON2022-04: Berger Hill SD





Response Form

Project Number: ZON2022-04
Berger Hill Addition

You may make your views known by completing this form and returning it to the Planning & Zoning Department. You may also make your views known in person by attending the public hearings. **Please complete and return form to:**

City of Nacogdoches Planning & Zoning Department
Attn: Rhonda Lewis
PO Drawer 635030
Nacogdoches, TX 75963

You may also email a copy to Rhonda Lewis, lewisr@nactx.us

Project Number: ZON2022-04

Please circle one:

☐ In favor of request

☒ Opposed to request

Comments:

Signature: _____

Printed Name: _____

Street Address: _____

City, State and Zip Code: _____

Phone Number: _____

Email Address: _____

Physical Address of Property within 200 Feet: _____

City of Nacogdoches
202 E. Pilar – PO Drawer 635030 – Nacogdoches, TX 75963
936-559-2574 Fax 936-559-2910 www.nactx.us
Home of Stephen F. Austin State University www.sfasu.edu

ZON2022-04 Site Photos



Street view from
Dolph St.

Street view from
Powers St.





Elementary school
north across Dolph St.





Single family east
on Dolph St.

Single family west
on Dolph St.



Church west across Nash St.





Single family south
along Powers St.



ORDINANCE NO. 1911-05-22

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS, AMENDING THE BOUNDARIES OF A ZONING DISTRICT WITHIN THE CITY OF NACOGDOCHES FROM R-2, SINGLE FAMILY TO R-3, TWO FAMILY FOR LOTS 1-10, OF THE BERGER HILL ADDITION, BEING APPROXIMATELY 1.5 ACRES, IN NACOGDOCHES, TEXAS; CONTAINING FINDINGS; PROVIDING A REPEAL CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Zoning Ordinance of the City of Nacogdoches allows the City Council to amend the official zoning map; and

WHEREAS, the property described above and depicted in “**Exhibit A**” is currently zoned R-2, Single Family; and

WHEREAS, the property owner has requested the zoning classification of said property to be changed to R-3, Two Family; and

WHEREAS, the City Council of the City has conducted, in the time and manner and after the notice required by law and the Zoning Ordinance of the City, a public hearing on such request for change in zoning classification; and

WHEREAS, the City Council now deems it appropriate to grant such requested change in classification.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS:

SECTION I

Findings.

The facts and matters set forth in the preamble of this Ordinance are hereby found to be true and correct, and same are deemed to be in furtherance of a public purpose.

SECTION II

Approval of Zoning Change

Pursuant to the requirements of Chapter 118 of the Code of Ordinances of the City of Nacogdoches, Texas, a change in Zoning Classification from R-2, Single Family to R-3, Two Family is hereby approved by the City Council.

SECTION III

Repeal

This Ordinance shall in no manner repeal, amend, change, supplement, or revise any provision of any ordinance of the City, save and except the granting change in Zoning Classification as herein provided.

SECTION IV

Effective Date

This Ordinance shall take effect following its passage and publication as may be required by governing law.

SECTION V

Severability

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end, the provisions of this Ordinance are declared to be severable.

SECTION VI

Proper Notice and Open Meetings

It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

SECTION VII

Filing

The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the ____ day of _____, 2022, by a vote of ____ (ayes) to ____ (nays) of the City Council of the City of Nacogdoches, Texas.

CITY OF NACOGDOCHES

By: _____
JIMMY MIZE, Mayor

ATTEST:

APPROVED AS TO FORM:

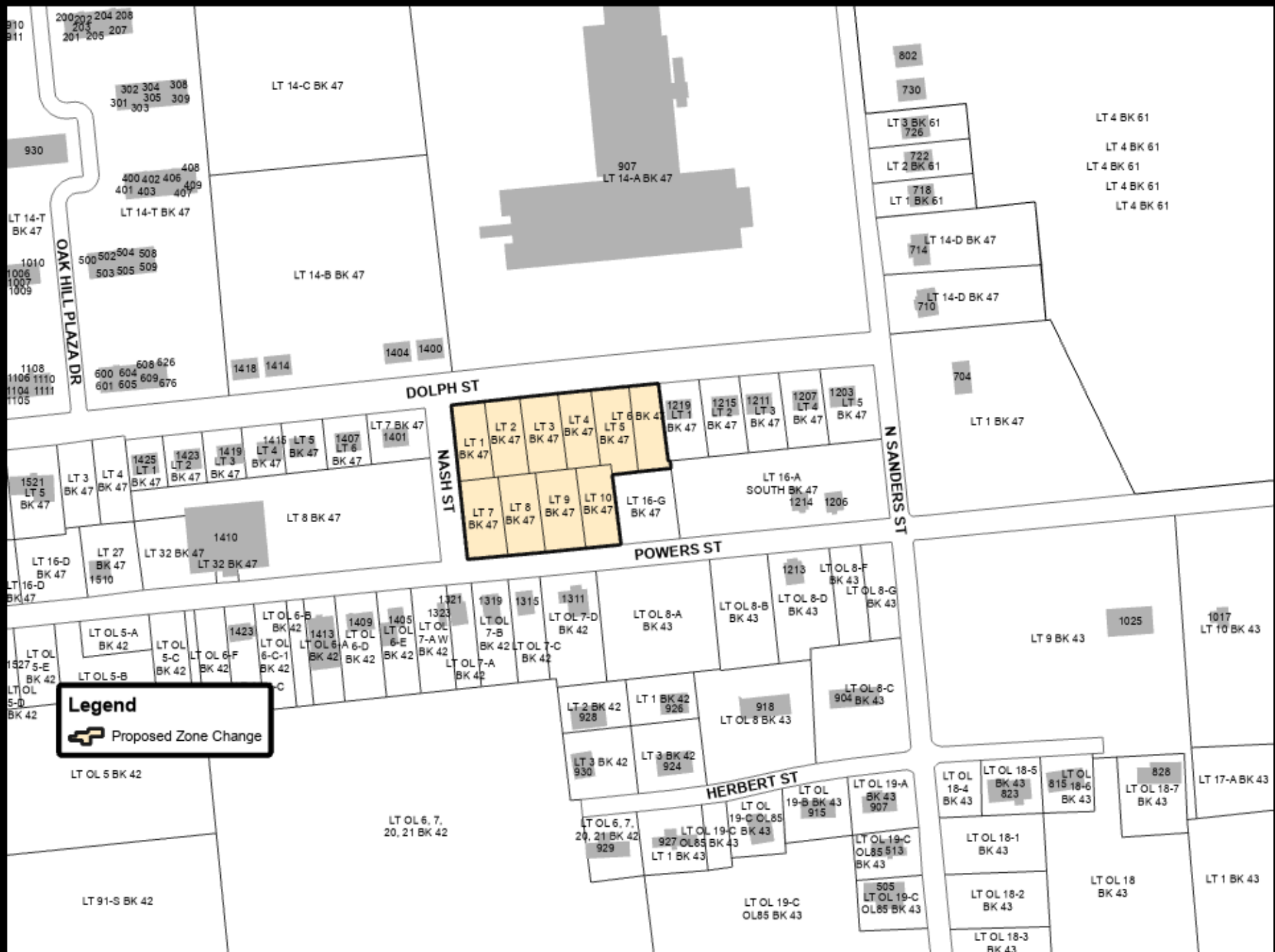
JAN VINSON, City Secretary

STEVEN KIRKLAND, City Attorney

APPROVED AS TO CONTENT:

ALAINA HELTON, City Planner

ZON2022-04: Exhibit A



Notice: This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.



0 50 100 200 Feet

Date Created: April 20, 2022 Software: ArcGIS Pro 2.9.2



PRESENTER: Alaina Helton, City Planner

ITEM/SUBJECT: Public Hearing: Consider approval of a Zone Change from PD, Planned Development District to R-4, Multi Family for approximately 3 acres, being Lots 5 and 6, Block 4, of the Creek Bend Subdivision – Unit 2, generally located at the southeast corner of South Steen Drive and Creek Bend Blvd. This request has been submitted by Mario Wesley. Case File ZON2022-03. (City Planner) **(PLEASE NOTE THAT AT THE REGULAR MEETING OF THE PLANNING & ZONING COMMISSION HELD ON MAY 9TH, 2022, THE COMMISSION VOTED UNANIMOUSLY TO POSTPONE THE PUBLIC HEARING TO THE REGULAR MEETING OF THE PLANNING & ZONING COMMISSION ON JUNE 13, 2022.)**

SUMMARY/BACKGROUND: The request is for a zone change from PD, Planned Development District to R-4, Multi-Family for approximately 3 acres located at the southeast corner of S. Steen Drive and Creek Bend Blvd. The R-4, Multi Family district is intended for higher-density residential areas which may contain a mixture of single-family, two-family, and multiple-family dwellings. District regulations are designed to protect residential characteristics of the area and to prevent the overcrowding of land.

This property is part of a larger area that was zoned from R-1 to PD in the 1980's for high density residential development. The original plans for development of the area have lapsed, necessitating the approval of new development plans, or a change in zoning in order for the property to be developed. Since the original approval of the PD, the area included in the original concept plan has seen little development.

Adjacent Land Use & Zoning

The subject property is zoned PD, Planned Development and is currently undeveloped. The large tracts to the north across Creek Bend Blvd. have been developed for sorority houses with a couple of duplexes located on the north side of N. Steen Drive. The remainder of the properties in the PD are undeveloped, with the exception of a vacant fraternity house to the west along S. Steen Drive. Property to the south is zoned Agriculture and undeveloped, and property to the east is zoned Commercial and is developed as an office and multi-family.

REVIEW CRITERIA: Per Section 118.139 of the Nacogdoches Zoning Ordinance, the following conditions shall be considered when reviewing an application for zoning change:

Compatibility: The specific use will be compatible with and not injurious to the use and enjoyment of other property in the immediate vicinity, nor significantly diminish or impair property values within the immediate vicinity;

The proposed R-4, Multi Family zoning district is consistent with the land uses approved for the original PD development plans, as well as the existing development located along Creek Bend Blvd.

Orderly Growth and Development: The establishment of the specific use will not impede the normal and orderly development and improvement of surrounding vacant property; The property is bounded by Creek Bend Blvd. to the north and S. Steen Drive to the west. Property to the east is developed, and property to the south has access to a public street and utilities. The approval of this zone change would not impede the normal development of the surrounding properties.

Supporting Facilities: Adequate utilities, access roads, drainage and other necessary supporting facilities have been or will be provided;

The subject properties take direct access from Creek Bend Blvd. and S. Steen Drive, which functions as primary access for the property and adjacent development. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the uses permitted under the R-4, Multi-Family zoning district. The property also has access to public utilities, with an 8-inch water main and 6-inch sewer main and a 8-inch water line along the public streets.

Drives and Parking: The design, location and arrangement of all driveways and parking spaces provides for the safe and convenient movement of vehicular and pedestrian traffic without adversely affecting the general public or adjacent developments; Future development will meet all current driveway and parking requirements.

Nuisances: Adequate nuisance-prevention measures have been or will be taken to prevent or control offensive odor, fumes, dust, noise and vibration; Future development will comply with City regulations regarding the prevention of offensive odor, fumes, dust, noise and vibrations.

Lighting: Any lighting to be provided will be directional so as not to disturb or adversely affect neighboring properties; If the zone change request is approved, any new outdoor lighting would be subject to the City's current standards, which requires light fixtures to utilize a down lighting design, and prohibits fixtures that directly project light in all directions.

Landscaping: Sufficient landscaping and screening to ensure harmony and compatibility with adjacent property exists or will be provided; Multifamily construction is subject to commercial district landscaping requirements and the screening requirements for commercial sites with residential adjacency.

Comprehensive Plan: The proposed use is in accordance with the comprehensive plan. Future Land Use

Per the 2003 Nacogdoches Comprehensive Plan, the Future Land Use Plan (FLUP) Map designates the subject property as *Multi Family Residential*. This FLUP category is described as, "Attached dwellings with three or more units, including apartments, townhouses, condominiums, patio homes, rooming/ boarding houses, and nursing homes and assisted-living developments."

Thoroughfare Plan

This section of Creek Bend Drive is built as a minor collector road, with the section of Creek Bend Blvd. to the east of the subject property designated as a future major collector. The roadway is adequate to accommodate the nature and volume of traffic typically generated by the proposed use.

Land Use Policies, Goals & Objectives

This rezoning is a response to current needs for residential growth and therefore fits into the goals of the Comprehensive Plan; specifically, the goal to encourage *Growth Inward* – Long-

term growth in appropriate areas to achieve an efficient, diverse and balanced pattern of land uses both within the City and urbanizing portions of its extraterritorial jurisdiction. Some of the targeted objectives include:

- Encourage infill development where appropriate (utilities, compatibility, etc.).
- Plan for mixing and/or separation of land use types based on desired, location, density and pattern of development.
- Promote growth where adequate infrastructure exists.

This request also furthers the Land Use Policies of the 2003 Comprehensive Plan, specifically:

- Compatibility with existing uses should be maintained. Well planned, mixed uses which are compatible are to be encouraged.

Staff finds that the request is in compliance with the FLUP and the stated Goals and Objectives of the 2003 Comprehensive Plan.

NOTICES:

Of the 12 notices mailed to property owners within the 200-foot notification area, staff has received one (1) written response in favor of the zone change and one (1) written response in opposition of the request. This zoning application was also subject to the additional noticing practices that were approved by City Council in January, 2021. These include: a zoning sign located on the subject property; notices published on the City's webpage and social media platforms; and, mailed courtesy notices to property owners within 500 feet of the subject property.

THE PLANNING & ZONING COMMISSION HELD ON MAY 9TH, 2022, THE COMMISSION VOTED UNANIMOUSLY TO POSTPONE THE PUBLIC HEARING TO THE REGULAR MEETING OF THE PLANNING & ZONING COMMISSION ON JUNE 13, 2022.

FINANCIAL:

No financial impact associated with this item

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

Neighborhood Revitalization and Attainable Housing

CITY CONTACT: Alaina Helton, AICP, City Planner
heltona@nactx.us
936-559-2572

ATTACHMENTS:

1. Aerial Map
2. Zoning Map
3. Site Photos

ZON 2022-03



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0 75 150 300 Feet

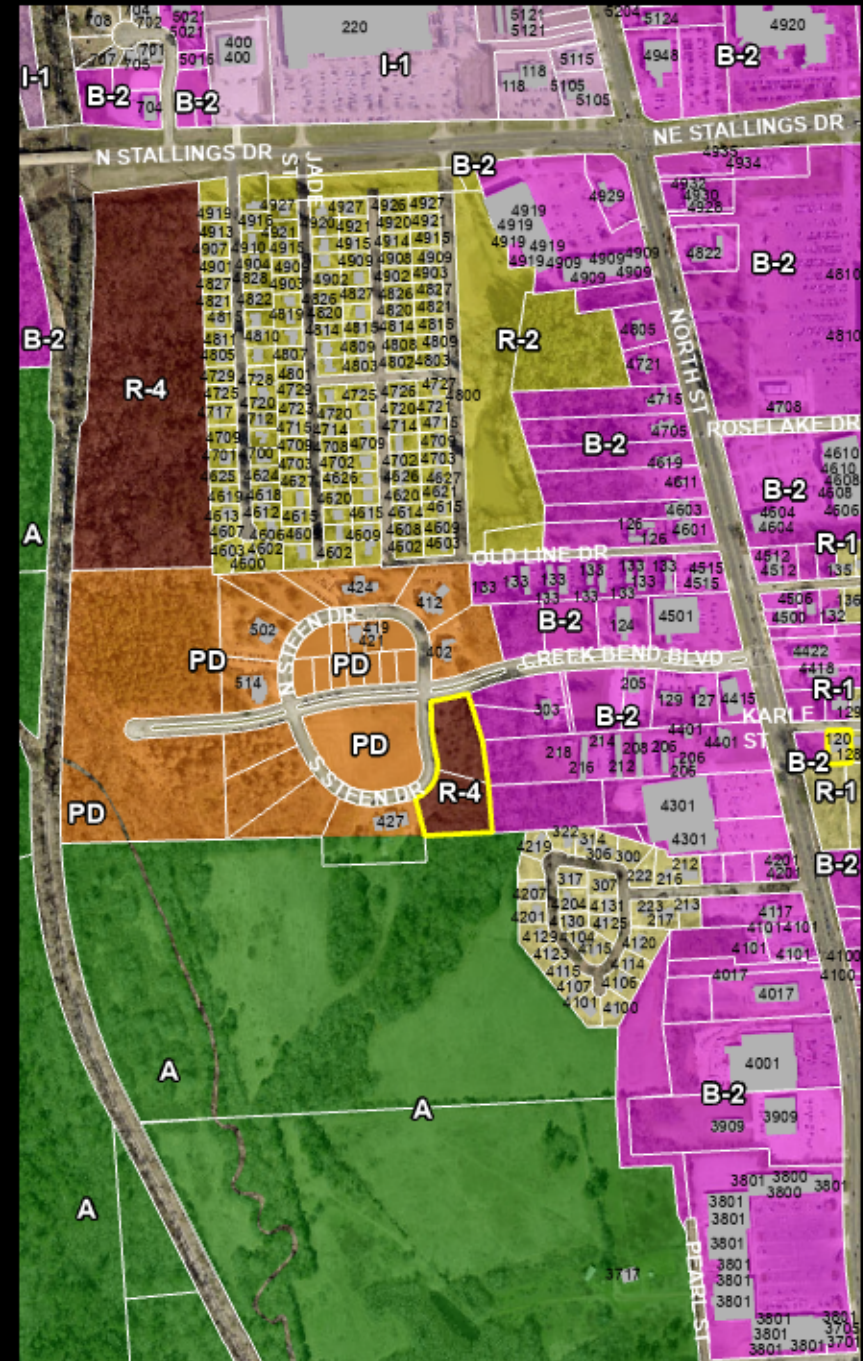
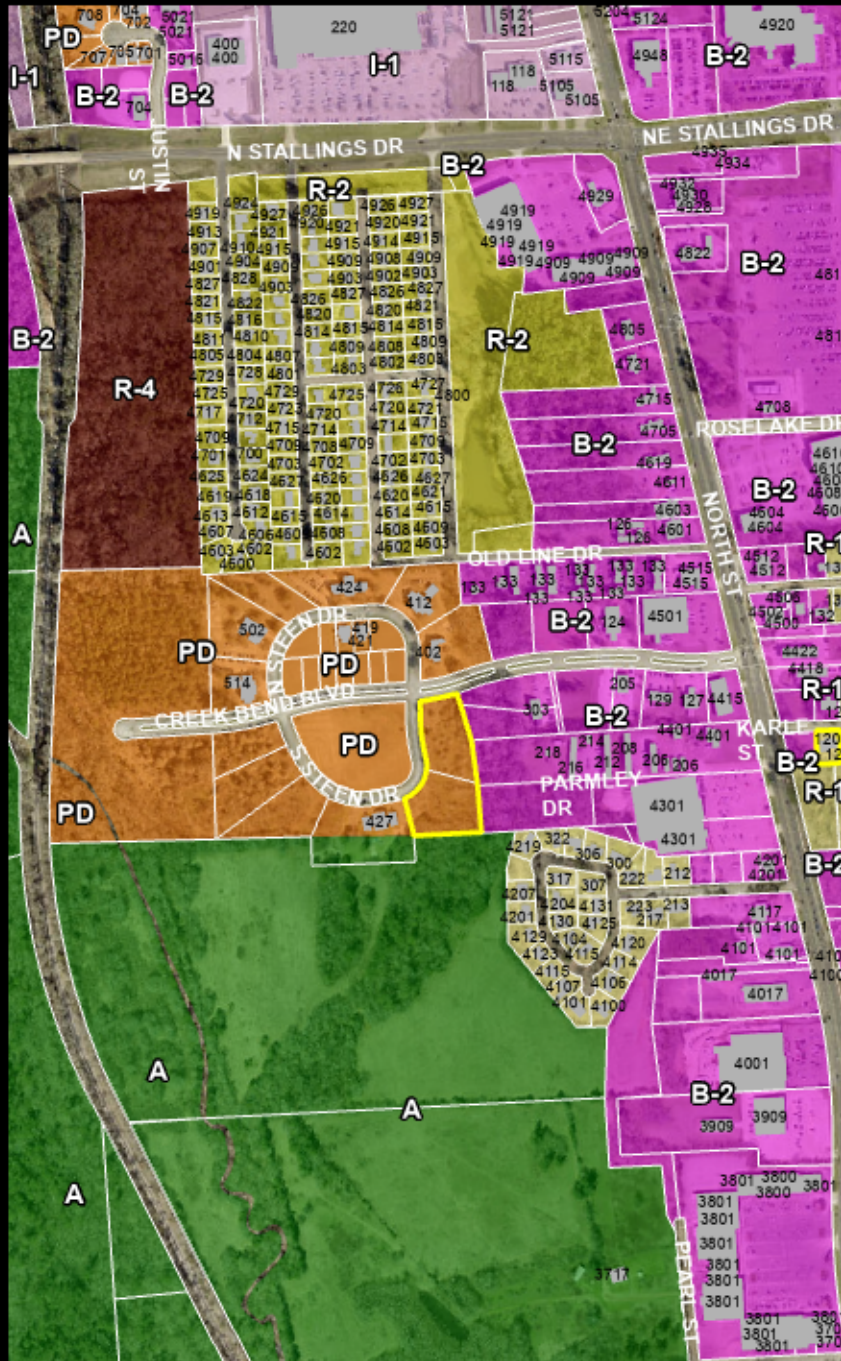
Date Created: April 19, 2022 Software: ArcGIS Pro 2.9.2



Existing Zoning

ZON 2022-03

Proposed Zoning



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Date Created: April 20, 2022 Software: ArcGIS Pro 2.9.2

0 200 400 800 Feet



ZON2022-03 Site Photos

Street view from Creek Bend Blvd.



Vacant fraternity house
to the southwest along S.
Steen Dr.





Sorority houses &
duplexes to the north
on N. Steen Dr.





City Council Meeting

Date: May 17, 2022

Agenda Item: 8.A.

PRESENTER:

ITEM/SUBJECT: Personnel Matters – Pursuant to Texas Government Code Section 551.074, deliberations regarding the employment of a public officer or employee. The subject of this executive session is to report on negotiations for a separation agreement with the Chief of Police.

SUMMARY/BACKGROUND:

FINANCIAL:

COUNCIL PRIORITIES: THIS AGENDA ITEM IS CONSISTENT WITH THE FOLLOWING CITY COUNCIL PRIORITIES

CITY CONTACT:

ATTACHMENTS: