

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

DEPARTMENT: Planning & Inspections Department-Subdivision and Flood Zone Sections
El Paso Water Utilities- Stormwater Engineering Division

AGENDA DATE: August 23, 2019: Regular Agenda Item 29.1

CONTACT PERSONS NAME AND PHONE NUMBER:

Philip F. Entiwe, Director (915) 212-1533
Kareem Dallo, Engineering Division Manager and Flood Plain Administrator (915) 212-1560
Alan Shubert, EPWater, Vice-President (915) 594-5644

DISTRICT(S) AFFECTED: District 1

SUBJECT:

Discussion and action on ROP Artcraft, LLC's Proportionality Appeal (Case No.: SUSU16-00050) submitted under the Texas Local Government Code Section 212.904 and El Paso Municipal Code Chapter 19.46.

BACKGROUND / DISCUSSION:

On July 23, 2019, ROP Artcraft LLC (ROP) presented its proportionality appeal to the City Council under Chapter 19.46 of the El Paso Municipal Code. In its proportionality appeal ROP complained of two requirements it alleges the City of El Paso imposed on ROP's on West Towne Marketplace development as a condition of the approval of a subdivision plat (Case No.: SUSU16-00050) approved by the City Plan Commission on August 26, 2016.

In connection with the subdivision plat approval, ROP applied for and obtained an exception from the City to permit it to develop over an arroyo on its property under El Paso Municipal Code Section 19.19.010(F) (stormwater culverts would be constructed in place of the arroyo). ROP further requested that the culverts connect to TxDOT right-of-way and facilities at IH-10, and that the culverts be maintained and repaired in the future by the City.

In its appeal, ROP argued that that the City required the stromwater culverts to be oversized and required ROP to dedicate a public easement without compensation, and that such requirements are not roughly proportional to the development.

This development is located within TIRZ 10A.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

No

AMOUNT AND SOURCE OF FUNDING: N/A



City Manager's Office

Mayor
Dee Margo

August 15, 2019

City Council

TO: Mayor and Council

District 1
Peter Svarzbein

FROM: John Balliew
Through Tommy Gonzalez
City Manager

District 2
Alexandra Anello

District 3
Cassandra Hernandez

RE: City Manager's Evaluation and Recommendation Regarding the Proportionality Appeal and Supporting Study

District 4
Dr. Sam Morgan

In accordance with Chapter 19.46 of the El Paso Municipal Code ("Code"), ROP Artcraft, LLC presented its proportionality appeal to you at the July 23, 2019 City Council's regular agenda meeting.

District 5
Isabel Salcido

Pursuant to Section 19.46.040 of the Code, I am submitting the enclosed/attached Position Statement, dated August 12, 2019, which was prepared and submitted to me by the Public Service Board.

District 6
Claudia Ordaz Perez

District 7
Henry Rivera

District 8
Cissy Lizarraga

If you have any questions, please let me know.

City Manager
Tommy Gonzalez

Tommy Gonzalez – City Manager
City #1 | 300 N Campbell | El Paso, Texas 79901 | (915) 212-1061

"Delivering Outstanding Services"

August 12, 2019

El Paso Water Utilities (EPW) Position Statement

CASE NO.: SUSU16-00050, ROP ARTCRAFT'S PROPORTIONALITY APPEAL

I. Introduction

On July 23, 2019 ROP Artcraft, LLC ("ROP"), presented its proportionality appeal to the City Council of El Paso, Texas under Chapter 19.46 of the El Paso City Code. In its appeal, ROP complains of two requirements it alleges the City of El Paso ("City") imposed on ROP's West Towne Marketplace ("WTM") development as a condition of the approval of a subdivision plat. Specifically, ROP argues that such alleged requirements are not roughly proportional to the development. First, ROP complains that the City required the stormwater culverts to be oversized compared to the size required to handle the volume of developed water the ROP development would produce. Second, ROP complains that the City required ROP to dedicate a "public" easement without just compensation.

II. Legal Standard and Question for Consideration

Texas Local Government Code, Section 212.904 ("Apportionment of Municipal Infrastructure Costs") provides:

- (a) If a municipality *requires as a condition of approval* for a property development project that the developer bear a portion of the costs of municipal infrastructure improvements ... the developer's portion of the costs may not exceed the amount required for infrastructure improvements that are roughly proportionate to the proposed development...." (emphasis added)

The scope of a proportionality appeal is limited to the following question:

Did a municipality, *as a precondition to approval of a development project*, impose infrastructure expenses on the development that are not proportional to the development's use of that infrastructure?

III. Summary

ROP has not established that the stormwater culverts were *required* by the City "as a condition of approval" of the WTM development. The City did not request nor at any time require construction of the culverts. Rather, ROP requested to build culverts over the natural arroyo in order to be able to develop a larger area on its development tract. ROP's sole election to develop over the natural arroyo on the WTM property and to provide a large continuous parking lot for its main tenant, Wal-Mart came with federal conditions regarding the size of culverts. The conditions regarding the size of the culverts is not a requirement of the City but is required by the Federal Emergency Management Agency (FEMA) of the United States Government. Such conditions are found under FEMA's Conditional Letter of Map Revision ("CLOMR").

Similarly, the public easement dedication was a result of a requirement imposed by the Texas Department of Transportation (TxDOT) and not by the City. In order for ROP to utilize TxDOT right-of-way and facilities at the IH-10 side of the ROP development, TxDOT required that the City be the entity to maintain and repair the culverts.

These two requirements did not originate with the City but rather were a result of ROP choice of developing over an arroyo and connecting to TxDOT facilities. ROP has failed to carry its burden of proof to establish that the requirements complained of were requirements imposed by the City. ROP's complaints are not properly filed as a proportionality complaint based on the elements of a proportionality appeal as defined by both State or Local law. ROP is not entitled to payment of costs or fees associated with the WTM development under Section 212.904.

IV. The Culverts and CLOMR

ROP's obligation to install the stormwater culverts as they are currently constructed is derived from a Conditional Letter of Map Revision ("CLOMR") issued by the Federal Emergency Management Agency (FEMA) on April 18, 2011. This CLOMR was issued by FEMA to the prior owner of the property upon which WTM was developed. Under that CLOMR, FEMA agreed that the prior owner could develop in or over the arroyo if three 8' x 7' drainage culverts were installed. ROP later obtained FEMA's consent to install only two 8' x 7' culverts, which are the culverts ROP actually installed. The FEMA requirement to install the culverts was voluntarily assumed by ROP when it purchased the property in 2015.

At the proportionality hearing, ROP's engineer asserted that the CLOMR merely approved a "conceptual" plan of development, thus implying that the CLOMR did not actually require culverts to be installed. This interpretation does not change the fact that the CLOMR was expressly based on the culverts being of an appropriate size in order to be installed over a watercourse. The CLOMR recites that:

"The basis of this CLOMR is, in whole or part, a culvert/channelization project. NFIP [National Flood Insurance Program] regulations, . . . , require that communities assure that the flood-carrying capacity within the altered or relocated portions of any watercourse is maintained."

In addition, ROP applied for and obtained an exception from the City to permit it to develop the arroyo pursuant to El Paso City Code Section 19.19.010(F). In ROP's application for this exception to the City Plan Commission (CPC), it represented to the CPC that culverts would be installed. This also demonstrates that the culvert requirement about which ROP complains was voluntarily undertaken.

In conclusion, the obligation to install the culverts in order to develop the arroyo was not a requirement imposed by the City, which means the complaint asserted by ROP is not properly a proportionality complaint, as noted by the City's Floodplain Administrator.¹

¹ See Report, Kareem Dallo, Engineering Division Manager and Floodplain Administrator (August 8, 2019). The Report responded to ROP's so-called "proportionality" claim, explaining how the decision to cover the arroyo was

Alternatively, ROP's argument that the effect of its development is only to add 2% developed water as compared to the stormwater flow in the arroyo is incorrect. ROP's decision to cover over the arroyo affected 100% of that flow. The FEMA requirement that the culverts be installed of a particular size was roughly proportionate to the development.

V. The Easement

ROP accepted this condition and the practical and economic benefit it provided ROP, that is, not to have to be responsible for maintenance and repair of the culverts, and to obtain TxDOT's consent to use TxDOT's IH-10 right-of-way and facilities. ROP voluntarily agreed to grant the easement in order to be able to obtain these benefits.²

Article III, Section 52 of the Texas Constitution forbids a public entity such as the City from providing free services to private individuals or entities or that benefit private property. In order for the City to be able to take on the responsibility for the culvert's maintenance and repair, it had to receive from ROP a comparable benefit in return. In this instance, the return benefit was the grant by ROP of the public easement about which it now complains, the public easement was roughly proportionate to the City's agreement to maintain and repair the culverts *in perpetuity*. The requirement by TxDOT that the City agree to maintain the culverts was the source of the requirement that an easement be granted. This was not a requirement imposed by the City unilaterally, but a condition which ROP accepted in order to obtain TxDOT's consent for ROP to use TxDOT right-of-way and facilities.

ROP has failed to establish that the easement requirement was imposed by the City as a condition of approval for the WTM development, and therefore ROP is not entitled to payment under Section 212.904 of costs associated with the easement.

VI. Other Remarks Made During Hearing

At the proportionality hearing, ROP made several unfounded allegations against City and EPW employees, which were not relevant to a proportionality determination, but are nonetheless addressed below.

1. EPW never agreed to share costs with ROP for the culverts

voluntarily made by ROP and its predecessors, meaning that the culverts solely benefitted the ROP property and that the construction of the culverts is 100% percent attributable to ROP's property.

² Richard Williams, ROP's engineer, stated "We are very gratified to confirm that PSB will accept the dedication of the channels within an easement and will subsequently assume maintenance for the portion of the channels which tend under the freeway frontage road in TxDOT property." ROP Hearing Exh. 9, October 16, 2015, email from Rich Williams to Alan Shubert.

ROP asserted that EPW employees made promises to contribute funds for the culverts. No such written or verbal agreements were ever made by EPW.³ Texas Local Government Code Section 271.151 requires that such an agreement be in writing and be properly authorized by the PSB. ROP knew it must obtain a written agreement, having entered into at least three such agreements with EPW during 2014 and 2015 on other projects. ROP admitted it had not obtained a contract or any such written agreement from EPW or the City.

2. EPW employee Alan Shubert did not evade service of ROP's subpoena

Alan Shubert did not attempt to evade service of a subpoena, as ROP's attorney asserted at the hearing. Mr. Shubert was out of town on official business on most of the days ROP identified as ones when service was attempted. On the Monday before the proportionality hearing, he was at City Hall and available for service. There is no authority in the El Paso City Code allowing ROP to issue subpoenas for the proportionality appeal.

3. "Political" statement

ROP alleged in the proportionality hearing that Mr. Shubert had stated that he could not provide a development agreement for the WTM development due to a "political problem." Mr. Shubert denies ever making such a comment.

4. "Extortion"

ROP accused City employee Kareem Dallo of "extortion" when he allegedly told ROP he would withdraw a certificate of occupancy if ROP did not come into compliance with its approved development plan. That was not "extortion." It was the official performing his duty.

5. Holding Pond

ROP also asserted at the proportionality hearing that an alleged requirement that ROP improve an existing holding pond on another property upstream from WTM development was not proportionate to the ROP development. This claim was not asserted by ROP in the proportionality appeal it filed on September 22, 2016, nor in ROP's appeal supplement. Thus, the new claim regarding a holding pond was not properly before the City Council for consideration.

VII. Recommendation

For the reasons noted above, ROP did not establish that either requirement it complains of was actually an imposition by the City as a condition of approval of ROP's WTM development. ROP has failed to carry that burden and therefore EPW recommends that ROP's proportionality appeal be denied.

³ Mr. Shubert acknowledges that the April 11, 2011 CLOMR on the property called for an Infiltration Basin and Stilling Basin which may have achieved some public benefit beyond this particular development; however, these basins were not actually constructed by ROP

Footnote 1
Engineer's Analysis

ROP ARTCRAFT
ENGINEERING REPORT

By

Kareem Dallo, P.E., CFM, CNU-A

Engineering Division Manager and Floodplain Administrator

August 8, 2019

Property

River Oak Property (ROP) is located in the northwest part of El Paso. North of the property is, Northern Pass Drive; East side of the property is, Northwestern Drive; South of the property is, Paseo Del Norte Boulevard; and, west of the property is, Desert Boulevard N.

The property consists of approximately 63.5 acres of land. Flow path number 38 previously went through the property by an arroyo, starting from the intersection of Paseo Del Norte and Northwestern Dr. to Desert Blvd-State right of way. As a result, the floodplain was approximately 11 Acres and the undeveloped area was 53 Acres. See attachments # - 1.

Drainage History

Around the year 1996, this area consisted of approximately 3,000 acres of undeveloped land. Flow path number 38 contributed approximately 5400 cfs at the outfall, cross section of IH-10 and north bound frontage road. See attachment #1. Flow path consisted of three main tributaries, namely, - flow path 38, 38A, and 38B (watershed areas from the Franklin Mountain). See attachment # 1.

Between 1999 – and - 2001, three property owners (Developers HUNT, Douglas Schwartz, and O’leary), retained the services of a consultant engineer by the name of - Moreno Cardenas Inc. (MCI), to prepare an application for a Conditional Letter of Map Revision (-“CLOMR”-) that would consist of a series of detention /retention basins – (ponding areas numbers 1,2,4, and 5) to capture 100% of the existing 100-year runoff from the Franklin Mountain. See attachment # 2. Ponds 1, 2, and 5 were proposed to capture 100% of the 100-year runoff from flow path number 38. Ponding area 4 was proposed to capture a portion of flow path Number 38 and all of the existing 100 year runoff for flow path number 38A and flow path number 38B.

Around the time period between 2002 through – 2003 - ; ponding areas 1, 2, 4, and 5 were constructed by the developers. See attachment # 2.

On August 6, 2007 FEMA approved the Letter of Map Revision (“LOMRs’) for the ponding areas. In June 8, 2011, a LOMR was approved by FEMA for Ponding area number 3, which captures 100% of the 100 -

year runoff from flow path number 38A. The LOMR as approved presents that flow path 38B was fully captured by ponding area Number 4. See attachment # 2.

As a result, the historical flow through the Plexxar property, which is currently ROP property, was reduced from approximately 5,400 cfs to 1,000 cfs.

On April 18, 2011, Kimley-Horn and associates, Inc. received approval from FEMA for a CLOMR for the Plexxar - Brent Harris property, which is currently ROP property, for the following improvements;

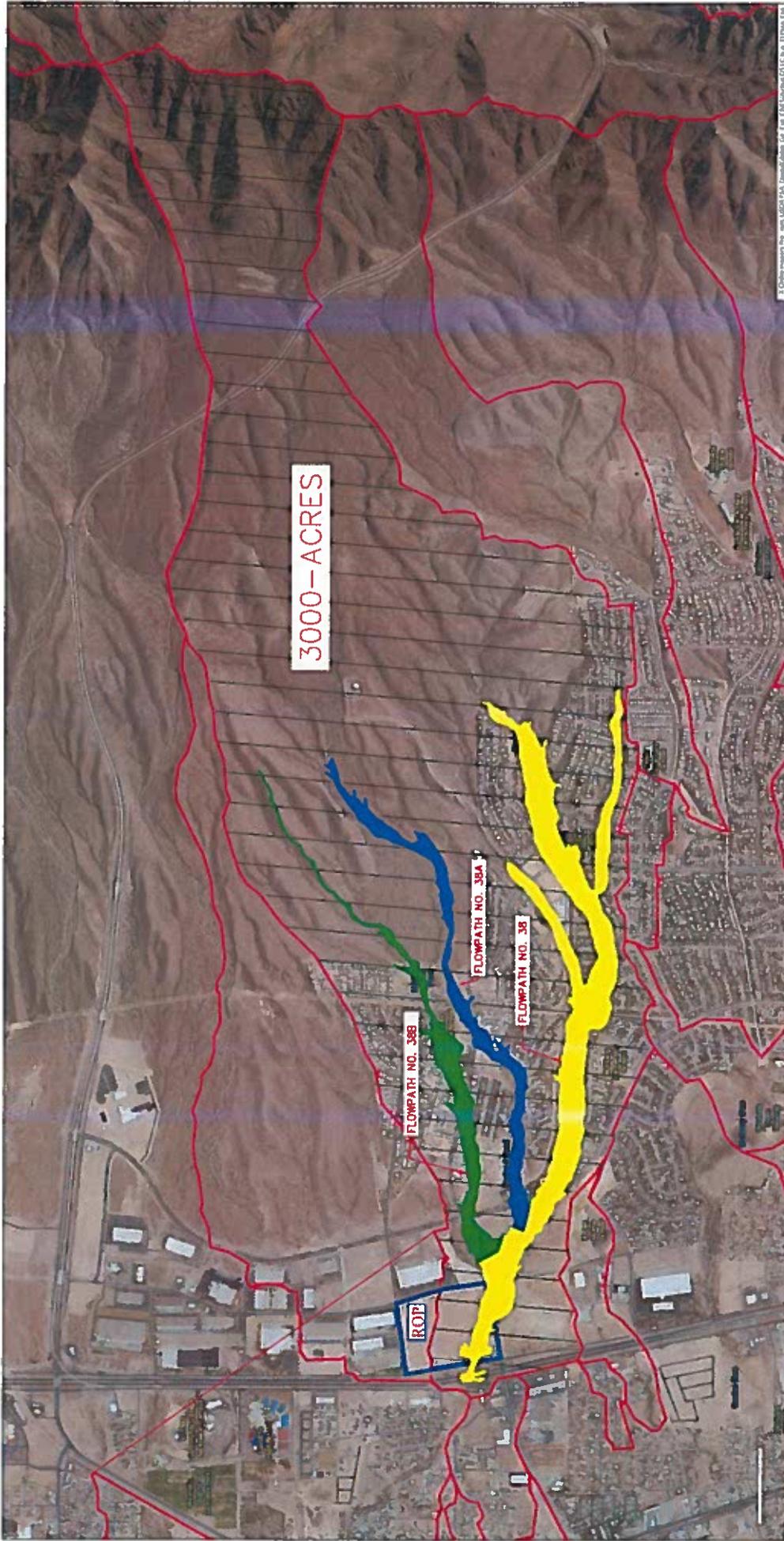
- Placement of fill and channelization
- Installation of 3- 8X7 reinforced concrete box culverts approximately 1,800 feet in length

ROP purchased the land from PLEXXAR sometime in 2015, and retained the services of Kimley Horn, and revised the existing the CLOMR by reducing the number of the box culverts from 3 to 2, in March 2016. FEMA approved the LOMR for this particular area. See attachments 3 and 4.

Conclusion

- Based on the above information, the historical flow going through the ROP property was reduced from approximately 5,400 cfs to 1,000 cfs.
- The owner is responsible for the upstream flow as per City ordinance section 19.50.050 - Accommodation of upstream drainage areas, the ordinance states" - Drainage facilities shall have enough capacity for potential runoff from upstream watershed drainage areas, whether inside or outside the subdivision. The size of the facility shall be based on the provisions of the Subdivision Improvement Standards, using conditions of maximum potential watershed development, and such calculation shall be subject to the approval of the City Engineer".
- Approved CLOMR existed on the property prior to the purchase of the land by ROP. Therefore, the proposed box culverts concept which FEMA approved prior to the purchase of the land by ROP was going to be constructed by the previous owner.
- As per City ordinance, the City of El Paso encourages developers for maintain open space in lieu of box culverts.
- ROP should have addressed this issue with the seller prior to purchasing the land. In addition, the City of El Paso is complying with Master Drainage plans,- that were produced by the developer's engineer (MCI), and also with FEMA's approval for the drainage area. Any issues regarding the drainage should be discussed by developers engineer (MCI) as per City ordinance,- the City's approval is based on the compliance with minimum provision of title 19. However, the engineer that sealed the plans is responsible for the contained and adequacy of such plans.

Based on the above- mentioned information, proportionality is not applicable on the subject property.



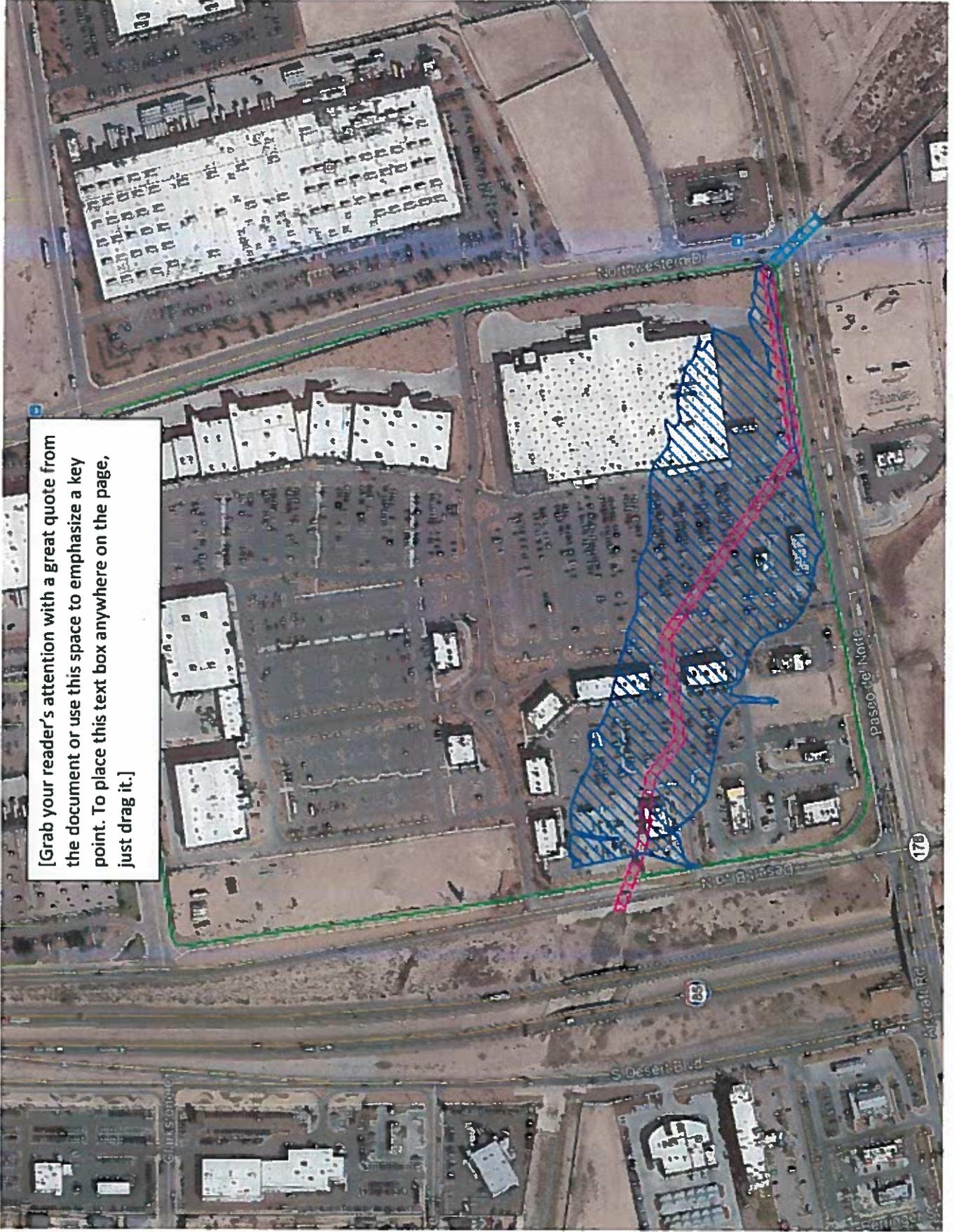
ATTACHMENT 1
PRE-DEVELOPED FLOWPATHS &
POST DEVELOPMENT WATERSHED



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ATTACHMENT 2 - POST DEVELOPMENT FLOW PATHS

[Grab your reader's attention with a great quote from the document or use this space to emphasize a key point. To place this text box anywhere on the page, just drag it.]





ATTACHMENT 4

Footnote 2
ROP E-mail Concerning Easement

Harrel Davis

From: Rich Williams <rwilliams@ropelpaso.com>
Sent: Friday, October 16, 2015 5:32 PM
To: Alan Shubert
Cc: Steve Howerton; Steve.Galloway@kimley-horn.com
Subject: Flow path 38 concrete channels at our upcoming center @ NEC Paseo del Norte & I-10

Alan,

Thank you for meeting with us yesterday to discuss our proposed shopping center development and the concrete channel storm water issues.

We are very gratified to confirm that the PSB will accept the dedication of the channels within an easement and will subsequently assume maintenance responsibilities including maintenance for the portion of the channels which will extend under the freeway frontage road in TxDOT property.

Today we have been discussing the PSB cost sharing for the channels which you proposed at a 30%. It is our understanding that because these channels will not only service our property the 30% limitation policy is not applicable and we will request a different consideration.

I believe the next best steps to establish the fair distribution of share for these channels are as follows:

- We will await the resolution of the PSB's acceptance of the Flow Path 38 study recently completed for PSB by Kimley-Horn.
- The acceptance of the study should result in confirmation of the exact flows to be accommodated by the channels.
- With this capacity requirement established we can then finalize the required channel sizing and designs.
- We would then plan to provide estimates to you for what the channels would cost if sized for only servicing our property vs. what the increased cost will be for also accommodating the off-site up-stream flows.
- We believe that this increased cost for sizing the channels to accept off-site flows should be 100% reimbursable from the PSB.

We hope the Flow Path 38 study can be finalized immediately as to allow time for resolving the distribution of share before we must finalize our project budget and financing. Time is of the essence for us.

Sincerely,

Richard G. Williams
Director of Construction
River Oaks Properties, Ltd.
106 Mesa Park Dr.
El Paso, TX 79912

Office: (915) 225-4739
Fax: (915) 225-5701
Email: rwilliams@riveroaksproperties.com

Footnote 3
April 18, 2011 CLMOR



Federal Emergency Management Agency
Washington, D.C. 20472

April 18, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable John F. Cook
Mayor, City of El Paso
2 Civic Center Plaza
El Paso, TX 79901

IN REPLY REFER TO:
Case No.: 11-06-0067R
Community: City of El Paso, TX
Community No.: 480214

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Dear Mayor Cook:

This responds to a request that the Department of Homeland Security's Federal Emergency Management Agency (FEMA) comment on the effects that a proposed project would have on the effective Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) report for the El Paso County, Texas and Incorporated areas (the effective FIRM and FIS report for your community), in accordance with Part 65 of the National Flood Insurance Program (NFIP) regulations. In a letter dated July 23, 2010, Mr. Steven D. Galloway, P.E., CFM, of Kimley-Horn and Associates, Inc., requested that FEMA evaluate the effects that the proposed Properties at Passo Del Norte Road and Northwestern Drive along Flow Path 38 from approximately 550 feet downstream of Interstate Highway 10 to approximately 2,060 feet upstream of Interstate Highway 10 would have on the flood hazard information shown on the effective FIRM. The proposed project includes placement of fill and channelization from approximately 530 feet upstream of Interstate Highway 10 to approximately 2,060 feet upstream of Interstate Highway 10, an Infiltration Basin approximately 450 feet upstream of Interstate Highway 10, a Stilling Basin approximately 450 feet upstream of Interstate Highway 10, a 1,540 foot long, three-barrel, 8 foot by 7 foot Reinforced Concrete Box (RCB) culvert approximately 510 feet upstream of Interstate Highway 10 along Flow Path 38. The area of the proposed project is shown on the City of El Paso, El Paso County, Texas, FIRM number 480214 0016 C, dated February 5, 1986. FIRM number 480214 0016 C was later revised by Letters of Map Revision (LOMRs), dated August 6, 2007 and June 8, 2011. The June 8, 2011, LOMR was issued on January 25, 2011, and requires a 90-day appeal period due to Base Flood Elevation (BFE) increases.

All data required to complete our review of this request for a Conditional Letter of Map Revision (CLOMR) were submitted with letters from Mr. Galloway.

We reviewed the submitted data and the data used to prepare the effective FIRM for your community and determined that the proposed project meets the minimum floodplain management criteria of the NFIP. The submitted existing HEC-RAS hydraulic computer model, dated January 11, 2011, was used as the base conditions model in our review of the proposed conditions model for this CLOMR request. We believe that, if the proposed project is constructed as shown on the design plans, entitled "Culvert Plan and Profile," dated December 2010, the floodplain boundaries of the base (1-percent-annual-chance) flood and the 0.2-percent-annual-chance flood will be delineated as shown on proposed topographic work map, entitled "Proposed Condition FEMA Regulatory Hydraulic Workmap," dated December 2010, prepared by

Kimley-Horn and Associates, Inc. In addition, if the data listed below are received, a revision to the FIRM and FIS report would be warranted.

Our comparison of existing conditions to the effective flood hazard information revealed that the Base Flood Elevations (BFEs) increased and decreased compared to the effective BFEs for Flow Path 38. The maximum increase in BFE, 1.8 feet, will occur approximately 220 feet upstream of the Interstate Highway 10. The maximum decrease in BFE, 5.8 feet, will occur approximately 290 feet downstream of Interstate Highway 10.

As a result of the proposed project and updated topographic information, the BFEs will decrease compared to the existing conditions BFEs for Flow Path 38. The maximum decrease in BFE, 0.1 foot, will occur approximately 490 feet upstream of the Interstate Highway 10.

As a result of the proposed project and updated topographic information, the BFEs will increase and decrease compared to the effective BFEs for Flow Path 38. The maximum increase in BFE, 1.8 feet, will occur approximately 220 feet upstream of the Interstate Highway 10. The maximum decrease in BFE, 5.8 feet, will occur approximately 290 feet downstream of Interstate Highway 10.

As a result of the proposed project and updated topographic information, the width of the Special Flood Hazard Area (SFHA), the area that would be inundated by the base flood, will increase and decrease compared to the effective SFHA width along Flow Path 38. The maximum increase in SFHA width, approximately 80 feet, will occur approximately 210 feet downstream of the Interstate Highway 10. The maximum decrease in SFHA width, approximately 540 feet, will occur approximately 390 feet downstream of the Interstate Highway 10.

Upon completion of the project, your community must submit the data listed below and request that we make a final determination on revising the effective FIRM and FIS report.

- Detailed application and certification forms, must be used for requesting final revisions to the maps. Therefore, when the map revision request for the area covered by this letter is submitted, Form 1, entitled "Overview and Concurrence Form," must be included.
- The detailed application and certification forms listed below may be required if as-built conditions differ from the preliminary plans. If required, please submit new forms (copies of which are enclosed) or annotated copies of the previously submitted forms showing the revised information.
 - Form 2, entitled "Riverine Hydrology and Hydraulics Form"
 - Form 3, entitled "Riverine Structures Form"

Hydraulic analyses, for as-built conditions, of the base flood and 0.2-percent-annual-chance flood.

- As-built plans certified by a registered Professional Engineer of all proposed project elements
- A topographic work map showing the revised floodplain boundaries, must be submitted with Form 2
- Documentation of the individual legal notices sent to property owners who will be affected by any increases in BFEs, any widening or shifting of the SFHA

- An annotated copy of the FIRM, at the scale of the effective FIRM, showing the revised floodplain boundary delineations shown on the submitted work map, and how they tie-in to the floodplain boundary delineations shown on the effective FIRM at the downstream and upstream ends of the revised reach.
- An officially adopted maintenance and operation plan for the Stilling basins. This plan, which may be a written statement from the community's Chief Executive Officer, an ordinance, or other legislation, must describe the nature of the maintenance activities, the frequency with which they will be performed, and the title of the community official who will be responsible for ensuring that the maintenance activities are accomplished.
- A preliminary countywide study for El Paso County, Texas and Incorporated Areas, is currently under review. The ongoing preliminary countywide study encompasses the reach for which this CLOMR is being issued. Upon completion of the project for which this CLOMR is issued, please comply with one of the following alternative requirements:
 - If a LOMR for this proposed project is requested before the preliminary countywide study becomes effective, then the BFEs and SFHA boundary delineations must tie-in to the currently effective information, as shown on FIRM Panel 480214 0016 C, dated February 5, 1986 and as revised by LOMRs, dated August 6, 2007 and June 8, 2011 . Therefore, for the LOMR that follows this CLOMR, please submit hydraulic models in which the revised BFEs and SFHA boundary delineations tie into the effective BFEs and SFHA boundary delineations at the downstream and upstream ends of the revised reach.
 - If a LOMR submittal for this proposed project is received after the preliminary countywide study has become effective, then the BFEs and SFHA boundary delineations must tie into that new effective information.

Effective January 13, 2010, FEMA revised the fee schedule for reviewing and processing requests for conditional and final modifications to published flood information and maps. In accordance with this schedule, the current fee for this map revision request is \$5,000, and must be received before we can begin processing the request. Please note, however, that the fee schedule is subject to change, and requesters are required to submit the fee in effect at the time of the submittal. Payment of this fee shall be made in the form of a check or money order, made payable in U.S. funds to the National Flood Insurance Program, or by credit card (Visa or MasterCard only).

The payment, along with the revision application, must be forwarded to the following address:

FEMA LOMC Clearinghouse
7390 Coca Cola Drive, Suite 204
Hanover, MD 21076

After receiving appropriate documentation to show that the project has been completed, FEMA will initiate a revision to the FIRM and FIS report. Because the BFEs would change as a result of the project, a 90-day appeal period would be initiated, during which community officials and interested persons may appeal the revised BFEs based on scientific or technical data.

The basis of this CLOMR is, in whole or in part, a culvert/channelization project. NFIP regulations, as cited in Paragraph 60.3(b)(7), require that communities assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained. This provision is incorporated into your

community's existing floodplain management regulations. Consequently, the ultimate responsibility for maintenance of the modified culvert and channel rests with your community.

This CLOMR is based on minimum floodplain management criteria established under the NFIP. Your community is responsible for approving all floodplain development and for ensuring all necessary permits required by Federal or State law have been received. State, county, and community officials, based on knowledge of local conditions and in the interest of safety, may set higher standards for construction in the SFHA. If the State, county, or community has adopted more restrictive or comprehensive floodplain management criteria, these criteria take precedence over the minimum NFIP criteria.

If you have any questions regarding floodplain management regulations for your community or the NFIP in general, please contact the Consultation Coordination Officer (CCO) for your community. Information on the CCO for your community may be obtained by calling the Director, Mitigation Division, of FEMA in Denton, TX, at (940) 898-5127. If you have any questions regarding this CLOMR, please contact the FEMA Map Information eXchange (FMIX), toll free, at 1-877-FEMA MAP (1-877-336-2627).

Sincerely,



Michael J. McGinn, Program Specialist
Engineering Management Branch
Federal Insurance and Mitigation Administration

For: Luis Rodriguez, P.E., Chief
Engineering Management Branch
Federal Insurance and Mitigation Administration

cc: Mr. R. Alan Shubert, P.E., CFM
City Engineer/Floodplain Administrator
City of El Paso

Mr. Steven D. Galloway, P.E., CFM
Kimley-Horn and Associates, Inc.