



CITY OF FAIR OAKS RANCH
AGENDA – JOINT PUBLIC HEARING
CITY COUNCIL and PLANNING AND ZONING COMMISSION
October 10, 2019; 6:30 PM
City Hall Council Chambers
7286 Dietz Elkhorn, Fair Oaks Ranch

I. OPEN MEETING

- A. Roll Call – Declaration of a Quorum
- B. Pledge of Allegiance.

II. PURPOSE OF THE JOINT PUBLIC HEARING

- A. The City Council and the Planning and Zoning Commission of the City of Fair Oaks Ranch, Texas, will conduct a joint public hearing to receive public testimony on the following Special Use Permit (SUP) Application SUP 2019-01: A request for a special use permit on approximately 45 acres allowing for a commercial equine boarding facility on land currently zoned as Neighborhood Residential (NR).
 - 1. Mayor opens the joint public hearing
 - 2. Staff presentation of the proposed special use permit application
 - 3. Applicant presentation of the special use permit application
 - 4. Council and P&Z receive public testimony for/against the special use permit application with the Mayor serving as the presiding officer
 - 5. Mayor closes the joint public hearing
 - 6. Council and P&Z discuss the case, inclusive of questions of the applicant and staff.

III. ADJOURNMENT

Signature of Agenda Approval:

I, Christina Picioccio, City Secretary, certify that the above Notice of Meeting was posted on the outside bulletin board at the Fair Oaks Ranch City Hall, 7286 Dietz Elkhorn, Fair Oaks Ranch, Texas, and on the city's website www.fairoaksranchtx.org, both places being convenient and readily accessible to the general public at all times. Said Notice was posted by 5:00 PM, October 7, 2019 and remained so posted continuously for at least 72 hours before said meeting was convened.

The Fair Oaks Ranch City Hall is wheelchair accessible at the side entrance of the building from the parking lot. Requests for special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary's office at (210) 698-0900. Braille is not available. The City Council reserves the right to convene into Executive Session at any time regarding an issue on the agenda for which it is legally permissible; pursuant to *Texas Government Code* Chapter 551. Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).



CITY COUNCIL and PLANNING AND ZONING COMMISSION
JOINT PUBLIC HEARING
City of Fair Oaks Ranch, Texas
October 10, 2019

HEARING TOPIC: Joint Public Hearing to receive public testimony on the following Special Use Permit (SUP) Application SUP 2019-01: A request for a special use permit on approximately 45 acres allowing for a commercial equine boarding facility on land currently zoned as Neighborhood Residential (NR).

DATE: October 10, 2019

DEPARTMENT: Administration

PRESENTED BY: Tobin Maples, City Manager

INTRODUCTION/BACKGROUND:

Sequence for conducting the joint public hearing is as follows:

1. Mayor opens the joint public hearing
2. Staff presentation of the proposed special use permit application
3. Applicant presentation of the special use permit application
4. Council and P&Z receive public testimony for/against the special use permit application with the Mayor serving as the presiding officer
5. Mayor closes the joint public hearing
6. Council and P&Z discuss the case, inclusive of asking questions of the applicant and staff
7. Meeting is adjourned with no formal action necessary

Subsequent to the Council's departure, the P&Z will convene into their regular business meeting to discuss the case and make a recommendation for City Council consideration. The P&Z may recommend approval/denial. The P&Z may choose to table the application request if they determine additional information from the applicant is warranted.

The City Council is the final authority on all special use permit applications. Accordingly, the Council will consider the application and the P&Z recommendation at their regularly scheduled business meeting on the 1st Thursday of the month following P&Z action.

LEGAL ANALYSIS:

The attached staff report and today's joint public hearing demonstrate compliance with the requirements as prescribed in Chapter 211 of the Local Government Code and the City's zoning ordinance.

RECOMMENDATION/PROPOSED MOTION:

Conduct the joint public hearing.

STAFF REPORT

To: City Council and Planning and Zoning Commission
From: Public Works Department
Date: October 10, 2019
Re: Special Use Permit No: SUP 2019-01

A request from Tim Taylor, property owner, to receive a special use permit on approximately 45 acres allowing a commercial equine boarding facility on land currently zoned as Neighborhood Residential (NR).

Physical Address: 30350 Ralph Fair Road, Fair Oaks Ranch, TX 78015

Summary of Request

The applicant is requesting approval of a special use permit to allow for the operation of a commercial *equine* boarding facility (commercial stable/boarding) on the subject property. More information regarding the proposed intended use and site plan for the property can be found in Exhibit 7 – Applicant Packet and statement.

The Unified Development Code (UDC) defines a Commercial Stable as follows:

Commercial Stables: Means any structure or place where livestock are kept for boarding, riding, feeding, or training for compensation, inclusive of the provision of livestock riding facilities such as covered arenas. For the purposes of Commercial Stables, livestock will include all animals of equine, bovine class including goats, sheep, mules, horses, cattle, and other grazing animals. Save and except for project animals (e.g., 4-H and FFA projects), livestock in the swine class are prohibited, and fish are excluded.

By way of background, the first draft of the Unified Development Code (UDC) did not address commercial stables from a zoning perspective. Accordingly, a group of volunteer citizens keenly familiar with uses of this nature assisted staff with developing the above referenced definition and the assignment of appropriate zoning districts within the permitted use table. The subject property is currently zoned Neighborhood Residential which allows for a commercial stable subject to City Council approval of a Special Use Permit (SUP). Applications for a SUP are processed in the same manner as a rezoning application. Similar to zoning, a SUP is tied to the land.

Site History

In May of 2010, this property was platted as Lot 1, in the Setterfeld Unit 1A subdivision. Upon adoption of the future land use map and zoning map in June 2018, the property was zoned Neighborhood Residential (NR). Mr. Taylor acquired the deed for this property in September of 2018.

This site is generally located along the north side of the Cibolo Creek, immediately east of Ralph Fair Road, across the street from Cibolo Creek Community Church and west and south of the Setterfeld Estates Subdivision. A summary of the surrounding land uses and zoning designations can be found in the following table:

Zoning		Current Land Use
NORTH	Neighborhood Residential	Residential
SOUTH	Rural Residential	Rural Acreage
EAST	Existing Residential -2	Residential
WEST	Existing Residential -3	Residential
SOUTHWEST	Civic and Community Facilities	Church

Conformance with Future Land Use Map

The Future Land Use Map adopted in June of 2018 designates this property as Neighborhood Residential (NR). The NR zoning district is described “serves as the residential district for areas where low-to-medium density development is appropriate in Fair Oaks Ranch. The lots are a minimum of 1 acre (or an average of 0.75 acres using the Conservation Development Alternative Minimum to incentivize conservation areas). The NR district allows a variety of lot sizes and housing. NR developments provide pedestrian-friendly residential neighborhoods, protected from incompatible uses. Residences in the NR district are appropriate primarily for direct access to Local Connector streets, Local Neighborhood Residential streets and Rural Residential streets.” Uses permitted by right in the NR zoning district, include the following:

- Parks, greens, plazas, squares, and playgrounds
- Single Family Residential
- Accessory Building Residential Unit (Garage Apt.)
- Home Occupations

Uses permitted with a Special Use Permit (S) in the NR zoning district, include the following:

- Family home child care
- Transitional Housing
- Telecommunications and broadcasting (radio, TV, cable, wireless communications, telephone, etc.)
- Commercial Stables/Boarding

The applicant is requesting approval of a special use permit to allow for the operation of a commercial *equine* boarding facility (Commercial Stables/Boarding) on the subject property. Save and except for grading modifications, the only new structure being proposed is a cover/roof for the existing open-air arena. More information regarding the proposed intended use of this property can be found in Exhibit 7 – Applicant Packet and statement.

Availability of Utilities

The agricultural portion of this parcel is serviced by a private well for water supply and operates a septic system for wastewater.

Public Notification

As required, City staff sent public notices, public comment forms, and location maps to all properties within 200 feet of the subject property, inclusive of the applicant/owner. Additionally, notice of the public hearing was published in the Boerne Star newspaper on September 20, 2019.

Opposition to or Support of Proposed Request

City staff has not received any returned notices in opposition to or in support of the special use permit application. Staff did receive a letter from a resident in the Setterfeld Estates subdivision (see exhibit 8) outlining questions about the SUP application/proposed use. Staff responses have been added to the letter via track changes mode.

Staff Recommendation

Subject to the conditions outlined below, Staff recommends approval of the Special Use Permit for the following reasons:

1. The small scale of the proposed specific use is consistent with commercial equine operations within other parts of the city with similar existing zoning and surrounding land uses. Accordingly, the proposed use is consistent with the character and spirit of the community for properties of this size.
2. The intensity (scale) of the proposed use is compatible with the existing surrounding properties. Staff does not believe the surrounding property owners or the general public will experience negative impacts associated with this use.
3. Staff does not believe the proposed use will have a significant impact on the health, safety and welfare of the surrounding neighborhoods.
4. Staff does not believe the proposed use will have a significant impact on public infrastructure such as roads, parking facilities and water and sewer systems. However, the applicant has indicated they may desire to host small private teaching clinics and small private shows in the future. A discussion regarding traffic control and additional off-street parking may be warranted depending on the size and number of clinics/shows.
5. Staff does not believe the proposed use will have a significant impact on public services such as police and fire protection and solid waste collection. The City's solid waste franchise contract does not include solid waste disposal for commercial properties. Commercial users are responsible for securing private solid waste disposal services.
6. Staff does not believe the proposed use has a significant impact on the ability of existing infrastructure and services to adequately serve this proposal.

Conditions:

1. No building permits will be issued until the applicant receives necessary approvals from FEMA and/or the City for required drainage studies (hydrologic/hydraulic, grading, and/or conditional letters of map amendments for modifications to areas within the floodplain. This includes a Water Pollution Abatement Plan (WPAP) if required due to proximity to the Edwards Aquifer Recharge Zone. The applicant has not finalized this work at this point as there is a significant cost associated with engineering work of this nature. The applicant has stated he will seek the necessary approvals subsequent to understanding if the proposed use (SUP for commercial stables) is approved.

2. All commercial stable and boarding activity shall be limited to the equine family of livestock and shall remain secondary and accessory to an established primary residential use on the property.
3. Structures or facilities used for stabling, storing, showing or training of equine must be set back a minimum of 100 feet from any adjacent privately-owned property. Dwelling units and accessory structures incidental to the dwelling units and irrigated pasturage may occur within the 100-foot setback area.
4. All outdoor lighting shall comply with the City's Dark Sky requirements.
5. All laws applicable to animal feeding operations or concentrated animal feeding operations (AFO and CFAO), disposal of manure, water pollution and abatement (WPAP), treatment of dust and erosion control, and concentration of equine (livestock unit) must be complied with for the entire period of the special use permit (see Exhibit 9, Texas Administrative Code).
 - a. AFO's & CAFO's: Requirements are based on the number of animals. Operations of less than 150 horses requires notification only.
 - b. Manure Disposal: Allowed in the floodplain under certain conditions. Further, Chapter 2, Section 2.04.004 of the City Code of Ordinances states that the owner of every animal shall be responsible for the removal of any excreta deposited by their animal(s) on public walks, recreation areas, public or private property, including the property of the owner.
 - c. Water Pollution Abatement Plan (WPAP): May be required due to the construction of the covered arena. This is the applicant's responsibility to verify/comply with the TCEQ review process.
 - d. Concentration of Equine: The City does not have any regulations so the P&Z and City Council can make this determination. Staff research on best practices indicates one (1) livestock unit per 20,000 sq. ft. of land area. One (1) acre equals 43,560 sq. ft.

Exhibits

1. Aerial Map
2. Zoning Map
3. Future Land Use Map
4. Notification Map
5. Floodplain Map
6. Notification List
7. Applicant Packet and Statement
8. Citizen letter, including staff response
9. Texas Administrative Code Documents

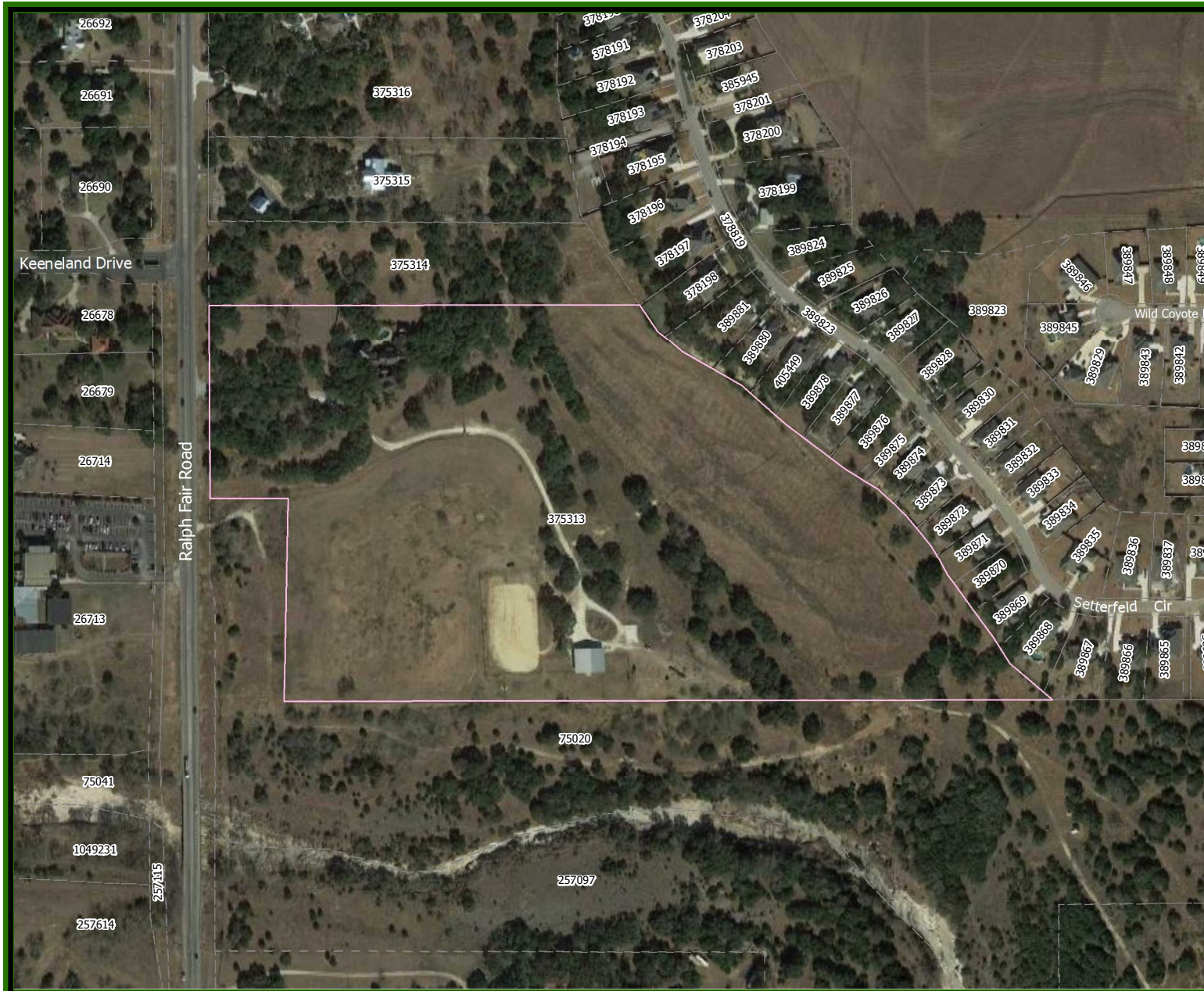


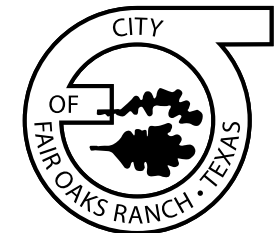
Exhibit 1 AERIAL MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

 Subject Property



August, 2019



1" ≈ 400'

Disclaimer – The City of Fair Oaks Ranch (COFOR) does not guarantee the accuracy, adequacy, completeness, or usefulness of any information. COFOR does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS Data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. GIS data is derived from public records that are constantly undergoing revision. Under no circumstances should GIS products be used for final design purposes. COFOR provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

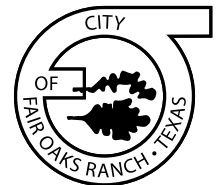
Exhibit 2 ZONING MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

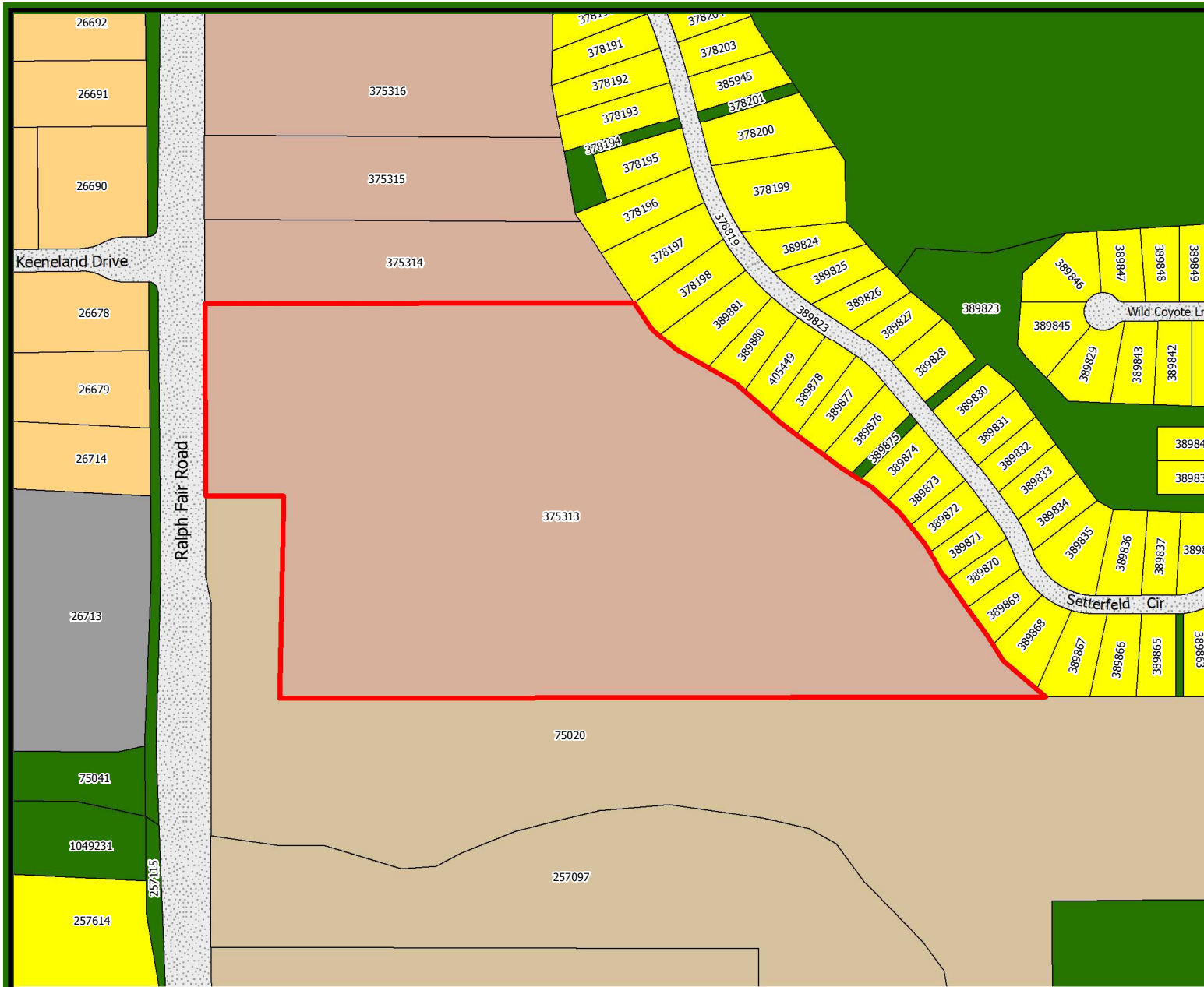
- Subject Property
- Civic & Community Facilities
- Existing Residential Two
- Existing Residential Three
- Neighborhood Residential
- Rural Residential
- Parks and Open Space



August, 2019



1" ≈ 400'



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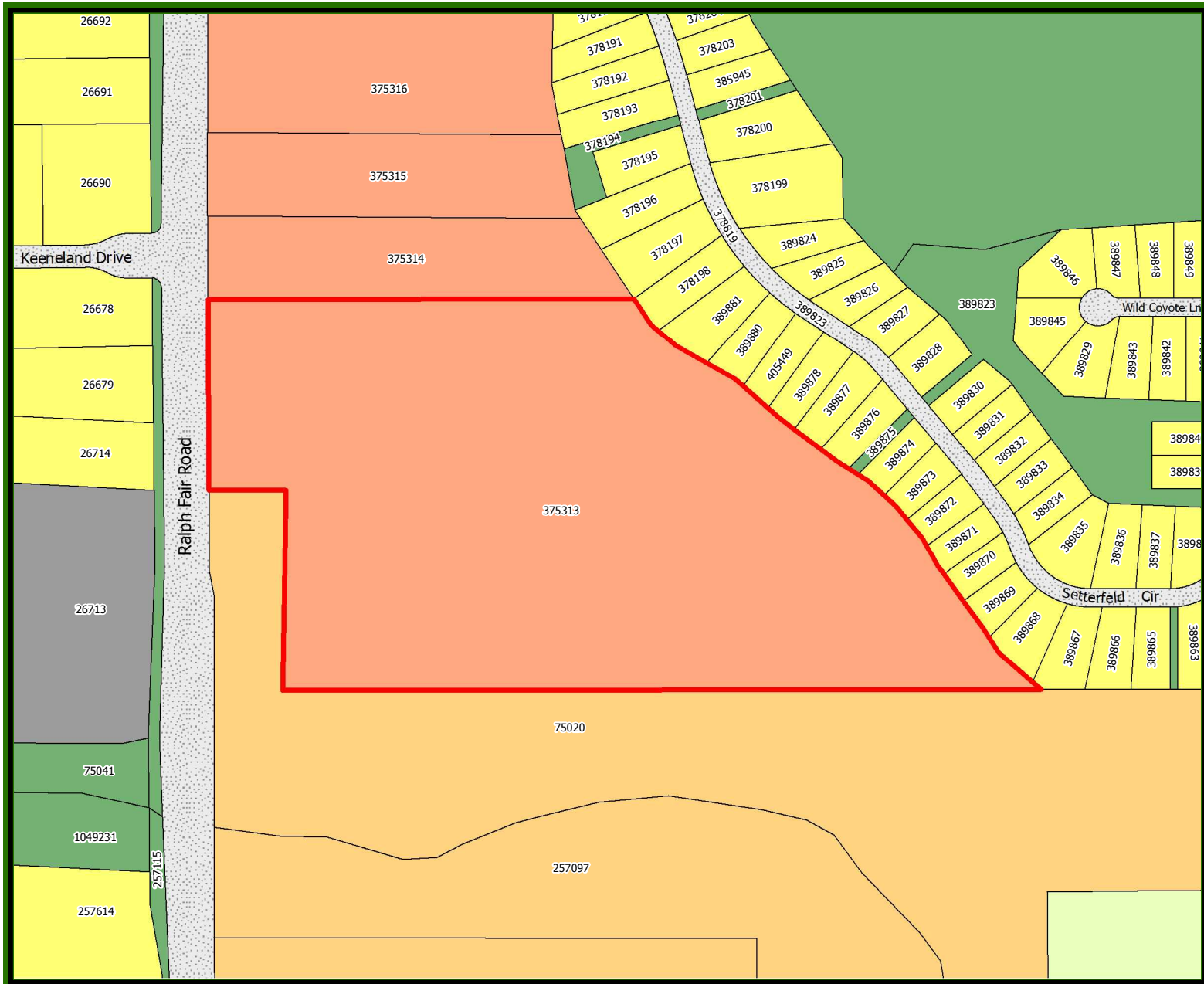


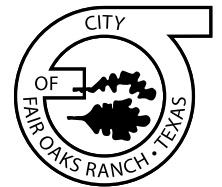
Exhibit 3 FLUM MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

- Subject Property
- Civic & Community Facilities
- Existing Residential
- Rural Residential
- Neighborhood Residential
- Existing Parks and Open Space
- Parks and Open Space



August, 2019



1" ≈ 400'

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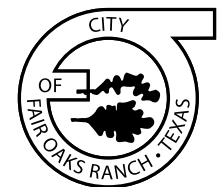
Exhibit 4 NOTIFICATION MAP

Setterfeld Estates

Unit 1A Lot 1

SUP No. 2019-01

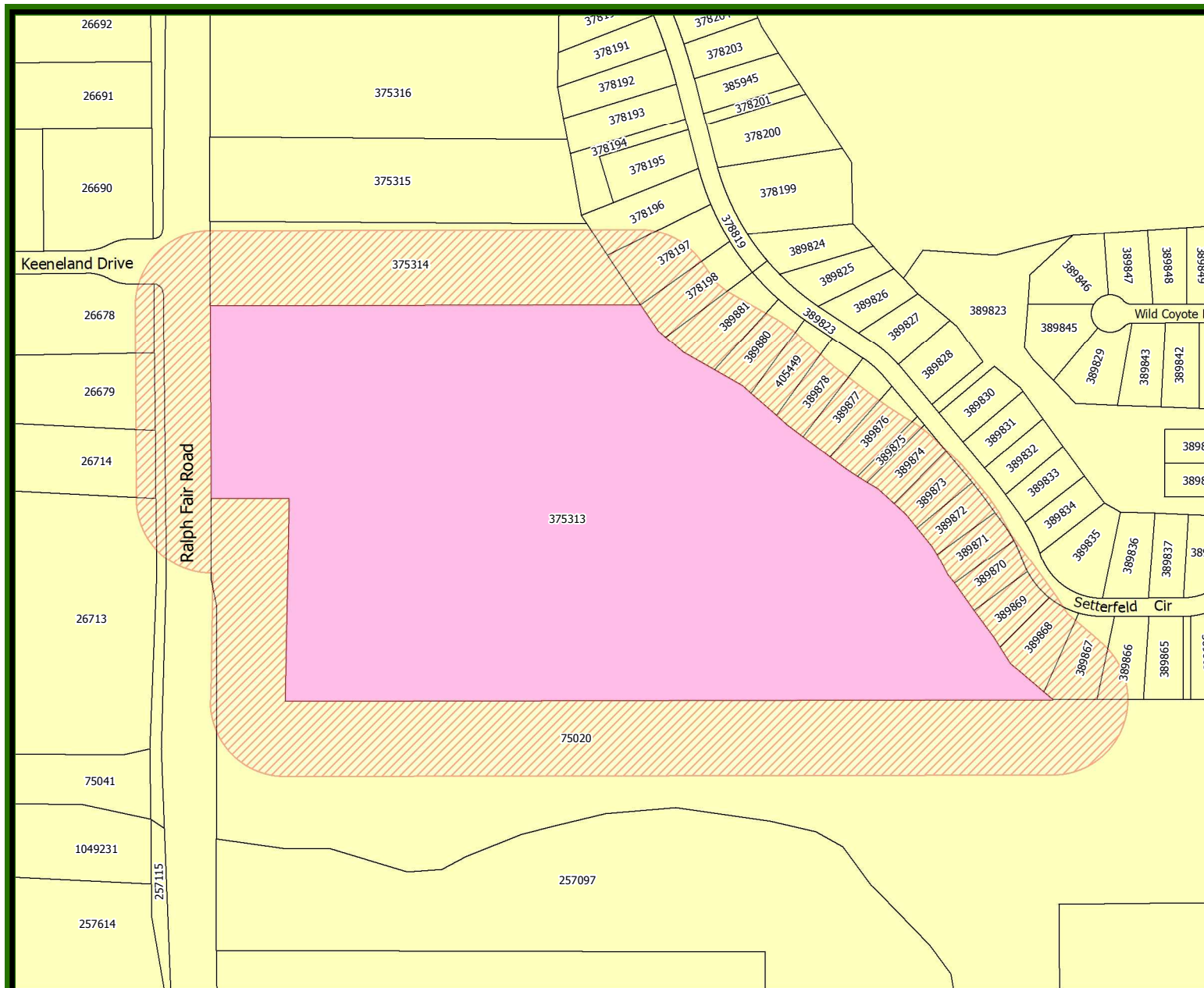
-  Subject Property
-  Notification Area
-  City Limits



August, 2019



1" ≈ 400'



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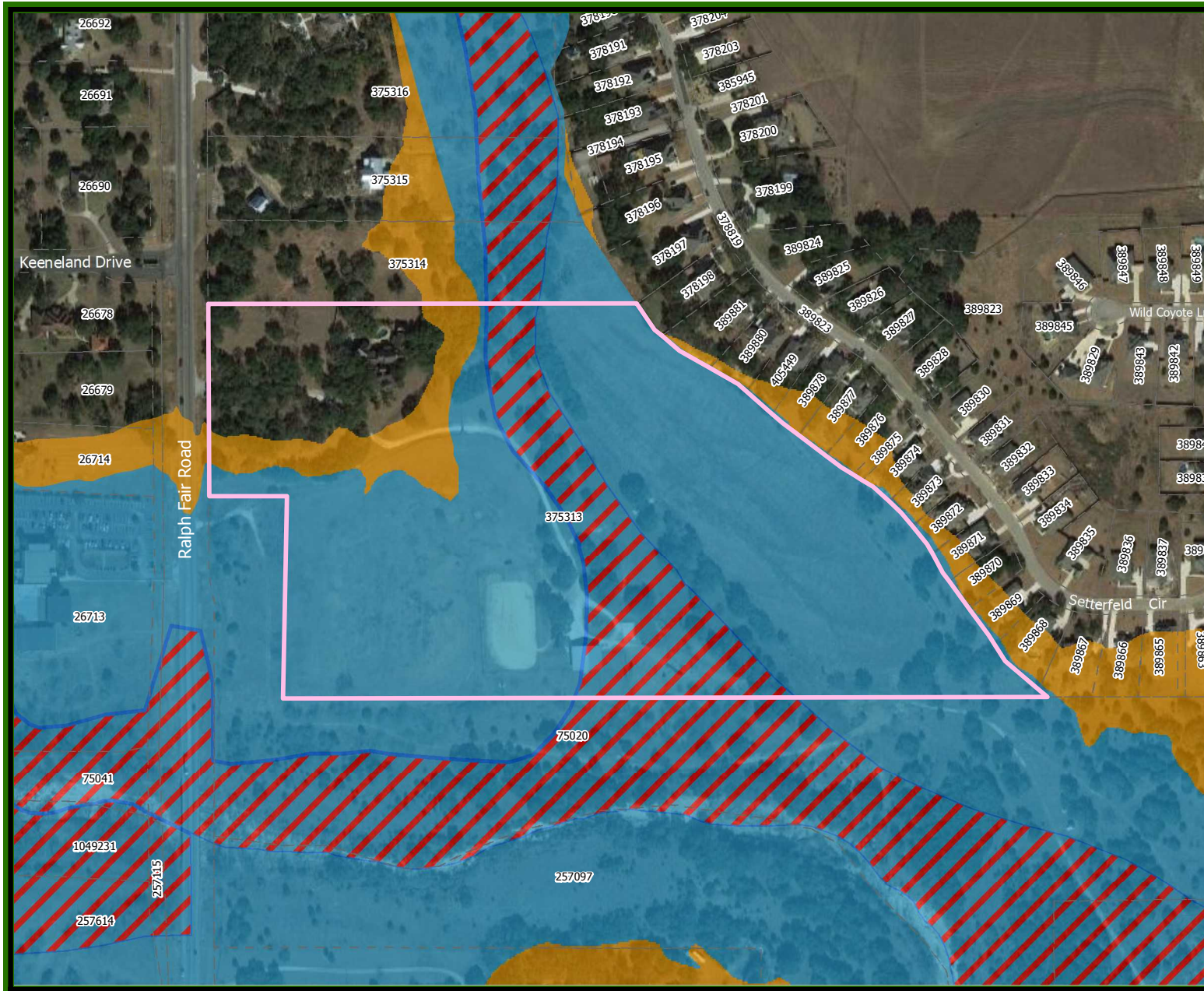


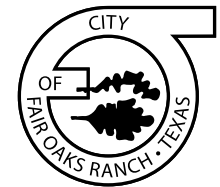
Exhibit 5 FLOODPLAIN MAP

SETTERFELD ESTATES

Unit 1A Lot 1

SUP No. 2019-01

- Subject Property
- High Risk Area
- High Risk Area - Floodway
- Moderate Risk Area



August, 2019



1" ≈ 400'

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Exhibit 6

Site Address	Mailing Address	Prop ID	Ac.	Owner	Legal Description
7240 KEENELAND DR	EVANGELINE Z BATES TR 7240 KEENELAND DR FAIR AOKS RANCH, TX 78015-4226	26678	2.11	BATES LIVING TRUST	FAIR OAKS RANCH COMAL COUNTY 4, LOT 1818
30440 SARATOGA LN	110 NORTH WIND LOOP ROSWELL, NM 88201-8362	26679	2.02	FREDRICKSON KARL & GENA	FAIR OAKS RANCH COMAL COUNTY 4, LOT 1819
30395 RALPH FAIR RD	30395 RALPH FAIR RD FAIR OAKS RANCH, TX 78015-4286	26713	9.03	CIBOLO CREEK COMMUNITY CHURCH	FAIR OAKS RANCH COMAL COUNTY 3, LOT 1801
30420 SARATOGA LN	30420 SARATOGA LN FAIR OAKS RANCH, TX 78015-4231	26714	2.16	RENTZ AUSTIN	FAIR OAKS RANCH COMAL COUNTY 3, LOT 1802
0 RALPH FAIR RD	508 ROYAL ST NATCHITOCHES, LA 71457-5713	75020	45.50	KOHL'S BRADLEY M	A-173 SUR-172M DE LA L GUERRA ACRES 36.461
30418 RALPH FAIR RD	TIMOTHY N SR & MARCI R TAYLOR TE 30350 RALPH FAIR RD FAIR OAKS RANCH, TX 78015	375314	5.45	TAYLOR LIVING TRUST 2-13-2009	SETTERFELD ESTATES 1A, LOT 2
30312 SETTERFELD CIR	30312 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	378196	0.83	GLORIA NICHOLAS J & EDMONIA G	SETTERFELD ESTATES 1, LOT 35
30318 SETTERFELD CIR	30318 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	378197	0.92	VILLARREAL ANDREW JR & MARIA T	SETTERFELD ESTATES 1, LOT 36
30324 SETTERFELD CIR	30324 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	378198	0.71	BASTIAN MECHELLE D	SETTERFELD ESTATES 1, LOT 37
30384 SETTERFELD CIR	30384 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389866	0.55	ZERTUCHE S & MARISA R	SETTERFELD ESTATES 2, LOT 114
30380 SETTERFELD CIR	30380 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389867	0.63	MAZICK JULIA & JORDAN	SETTERFELD ESTATES 2, LOT 115
30376 SETTERFELD CIR	30376 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389868	0.61	BESSELMAN TRAVIS W & DANA R	SETTERFELD ESTATES 2, LOT 116
30372 SETTERFELD CIR	30372 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389869	0.42	TARR DANIEL R & DALILA	SETTERFELD ESTATES 2, LOT 117
30368 SETTERFELD CIR	2005 NE GREEN OAKS BLVD STE 150 ARLINGTON, TX 76006	389870	0.39	ENDEAVOR WALL HOMES LLC	SETTERFELD ESTATES 2, LOT 118
30364 SETTERFELD CIR	30364 SETTERFELD CIR FAIR OAKS RANCH, TX 78015	389871	0.41	GRIVEL RENE J	SETTERFELD ESTATES 2, LOT 119
30360 SETTERFELD CIR	30360 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389872	0.41	HARVEY JOSEPH S	SETTERFELD ESTATES 2, LOT 120
30356 SETTERFELD CIR	30356 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389873	0.44	SLINKARD TROY & LEE C DAMICO-SLINKARD	SETTERFELD ESTATES 2, LOT 121
30352 SETTERFELD CIR	30352 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389874	0.42	GRAHAM GARRY L & CHRISTINE E	SETTERFELD ESTATES 2, LOT 122
	3424 PAESANOS PARKWAY STE 100 SAN ANTONIO, TX 78231	389875	0.15	SETTERFELD ESTATES HOA	SETTERFELD ESTATES 2, LOT 123
	3425 PAESANOS PARKWAY STE 100 SAN ANTONIO, TX 78231	389823	3.56	SETTERFELD ESTATES HOA	SETTERFELD ESTATES 2, LOT 71
30348 SETTERFELD CIR	2005 NE GREEN OAKS BLVD STE 150 ARLINGTON, TX 76006	389876	0.53	ENDEAVOR WALL HOMES LLC	SETTERFELD ESTATES 2, LOT 124
30344 SETTERFELD CIR	30344 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389877	0.59	GONZALEZ ABEL A JR	SETTERFELD ESTATES 2, LOT 125

30340 SETTERFELD CIR	30340 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389878	0.56	KAWECK DAVID A	SETTERFELD ESTATES 2, LOT 126
30332 SETTERFELD CIR	30332 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389880	0.57	SEGOVIA JESSE JR & CRYSTAL M CALDERA	SETTERFELD ESTATES 2, LOT 128
30328 SETTERFELD CIR	30328 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	389881	0.80	ALEXIS ALVIN A II	SETTERFELD ESTATES 2, LOT 129
30336 SETTERFELD CIR	30336 SETTERFELD CIR FAIR OAKS RANCH, TX 78015-2102	405449	0.51	BUSCH MICHAEL & CATHLINN	SETTERFELD ESTATES 2, LOT 127
F.M. 3351	4615 NW 410 SAN ANTONIO, TX 78229			ATT: CLAYTON RIPPS (EMAIL SCANNED NOTIFICATION: RICHARD.DELACRUZ@TXDOT.GOV)	F.M. 3351



City of Fair Oaks Ranch
ZONING CHANGE APPLICATION

(special use permit)

(Please type or Print)

Property Owner Information:

Name: Tim TAYLOR (TAYLOR LIVING TRUST)
 Contact Person: _____
 Address: 30350 RALPH FAIR RD
CITY: FAIR OAKS RANCH State: TX Zip: 78015
 Telephone No: 210 382 8511
 E-Mail: doctortimtaylor1@me.com
 Owner Signature: [Signature] Date: 8/14/2019

I am the owner of the herein described property and _____ is
 authorized to file this application on my behalf.

Applicant Information:

Name: SAME ↑
 Contact Person: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Telephone No: _____
 E-Mail: _____
 Applicant Signature: [Signature] Date: _____

Planner/Engineer Information: Civil Engineer

Name: Jeff Tyler
 Contact Person: JT
 Address: 2907 Red Sky Pass
CITY: San Antonio State: TX Zip: 78259
 Telephone No: 210 900 2448
 E-Mail: JTyler@TCOre.com

Surveyor Information:

Name: GE Reaves
 Contact Person: _____
 Address: 5250 Callaghan Rd
CITY: San Antonio State: TX Zip: 78228
 Telephone No: 210 490 4506
 E-Mail: _____



Subject Property Information

Lot: Prop ID: 375313 , Geo ID: 500670000100
Block: Comal County
Subdivision: Setherfield Estates 1A Lot 1 (not in HOA)
General location: 30350 Ralph Fair Rd

* If the request is for a portion of a platted lot or the property is not platted, a legal description of the property for which the zoning change is requested must be completed as "EXHIBIT A" and attached hereto. The legal description shall include the distance and bearing calls starting and closing from a point of beginning, inclusive of a map/survey exhibit.

Existing Zoning: NR
Acreage: 45 acres
Future Land Use Map Recommendation:
Proposed Zoning, Justification, Uses,
Acreage, etc. (use attachment if needed): See attached

City Office Use Only

Date Received:
Application Fee Due:
Application Fee Attached: Yes: ☒ No: ☐
Application Administratively Complete: Yes: ☒ No: ☐*

*Explanation: Paid \$600.00

Special Use Permit
Commercial Equine Boarding Facility

(Attachment)

Existing: Property currently has a 6-horse barn with a 40,000sf riding arena.

Proposed:

- Construction of New Horse Barn (10-12) stalls.
- Construction of cover for existing riding arena.
- Construction of 60ft diameter round pen.

Special Use:

We would like to open a small equine boarding facility for dressage riders and horses.

Taylor Boarding Facility
Special Use Permit

8/20/2019

Dear City of Fair Oaks Ranch,

There are many properties in Fair Oaks Ranch with horses and the city has a long history of being horse friendly. In fact, many streets have horse related names and there is a riding trail in the City of Fair Oaks Ranch. There are several horse related businesses currently existing in the city and in this letter I will attempt to share my vision for a boutique horse boarding facility. Over the past year, I have had several meetings and many email exchanges with city staff to address the issue of horse related facilities in Fair Oaks Ranch and small “mom and pop” equine operations and how they could be addressed. When I started having these conversations and meetings, there was no language in the new unified development code that addressed horse related properties and the small equine related businesses that were in existence.

My 45-acre property at 30350 Ralph Fair Road has an existing riding arena and a 6-horse barn. I am proposing to build one new structure. This would be a cover over my existing riding arena. Covering the arena will allow us to ride in the 100 degree summers and also on the few days when there is inclement weather. Covering the arena also helps to protect the specialized footing (synthetic fiber mixed with sand) that can easily dry out and get ruined. At the north end of the arena, I would like to include 10-12 horse stalls under the cover of the arena. Our facility will cater to the equine sport of dressage. Dressage is the art of riding and training the horse in a manner that develops obedience, strength, flexibility, and balance. Dressage is an Olympic sport and some people refer to it as ballet for horses. There is an existing equine dressage boarding facility in the City of Fair Oaks on Venturer that I think might be similar to what we are proposing. Our boarding facility will charge monthly rent to select clients and we will provide hay, clean the stalls, and offer the covered riding arena for dressage practice.

In terms of community need, the boarding facility on Venturer is at capacity. Another similar facility in Boerne on Vallerie Lane has recently closed and the boarding facilities at Double Diamond in Boerne are no longer taking new boarders. Our understanding is that when the facility was recently sold, the new owners want to focus on events, weddings, and corporate meetings. We, like many others, think that horses are beautiful creatures and horse facilities make a neighborhood happier and improve the quality of life of its residents. Although small, our facility will provide a collaborative community for residents of Fair Oaks Ranch who love the sport of dressage and need a place to board their horses. Please understand that this is not a business that will be profitable. The expense of building the covered

arena will never be recouped. It will take time, sweat, and money to build the barn and cover the arena, but having a small community of dressage boarders will allow our family to share our interest and love of horses with a few other like-minded equine enthusiasts. In short, we hope to have a few other people to ride with.

I understand and appreciate that the city must do its best to safeguard all of its residents and to make sure impacts of even small mom and pop businesses do not affect surrounding property owners. In my opinion, our facility should have no to very minimal impact on traffic. I suspect that with 10 boarding horses, each owner may visit the barn 3-4 times each week. There will also be deliveries of hay and shavings that will occur once each month. Horse trainers may regularly visit the facility to help coach and train the horses and provide teaching clinics. We may invite friends and other dressage riders to use the arena from time to time and may have practice schooling shows. The facility will not be open to the public, so there will not be retail traffic.

The proposed new stalls will draw water from my existing well to water the horses and to provide water to the single restroom. Under the cover of the arena near the new horse stalls, we will have a single restroom (one toilet and one sink) that will utilize the septic system that has recently been permitted, installed, and inspected by Comal County.

Our property has an extensive floodplain and I have been working with a civil engineer, Jeff Tyler from T-Core Engineering, who will be doing the hydrology studies, grading and site plan, and submitting the plans to the City of Fair Oaks and then the CLOMA to FEMA once there has been local approval of his plan. The new barn will utilize solar panels to operate fans in each of the stalls and a refrigerator in the tack room. There will be no residence or personal dwelling in the proposed barn. All manure will be stored and disposed of in a hygienic manner. Republic Waste has a service to remove manure.

Criteria for City Council Approval:

1. [There will be no significant negative impact upon residents of surrounding property or upon the general public.](#) As discussed above, the facility will add value to existing properties by providing and maintaining a beautiful facility. Although the horses themselves may not be visible to many existing homes, they will be visible from Ralph Fair Rd. The facility might also add value to the residents of Fair Oaks Ranch that may want to board their horses and have no current facility to use. The location of the proposed covered arena is not located near any existing homes and the work of the civil engineer will mitigate any potential drainage or water impact to surrounding properties.
2. [Review the Special Use Permit application based on the potential use's impact on the health, safety and welfare of the surrounding neighborhood.](#) There should be virtually no impact on traffic because of the nature of this proposed special use. The new horse stalls and arena are well away from any

property lines. Manure will be handled and disposed of in a professional way and there should be no impact on the health and safety of the surrounding neighborhood.

3. Review the Special Use Permit application based on its impact on public infrastructure such as roads, parking facilities and water and sewer systems. The proposed business will not utilize city water or sewage systems. The parking facilities will be minimal because there won't be retail clients and the facility will be private with a coded gate entry for only boarding clients.
4. Review the Special Use Permit application based on its impact on public services such as police and fire protection and solid waste collection. I don't anticipate this facility to impact police, fire, or solid waste collection.
5. Review the Special Use Permit application based on the ability of existing infrastructure and services to adequately provide services. Again, I don't anticipate any infrastructure or service limitations.

As a private resident of Fair Oaks Ranch (not a land developer), I'm trying my best to answer the questions on the special use permit. Please contact me anytime by phone, text, or email for any necessary documents, drawings, or information.

Sincerely,

Tim Taylor
210-382-8511
doctortimtaylor1@me.com

September 27, 2019

City of Fair Oaks Ranch

Attn: Tobin Maples

7286 Dietz Elkhorn

Fair Oaks Ranch, TX 78015

Re: SUP No. 2019-01 Special Use Permit Request by Tim Taylor, 30350 Ralph Fair Rd

Dear Mr. Maples,

Per our conversation today, please find following some of the questions/concerns we would like addressed before the above referenced Special Use Permit is issued.

- Flooding. Our property at 30352 Setterfeld Circle backs up to this properties fence line on the East. We have experienced flooding in our back yard, more than once, from the Channel built to divert the water directly out to the Flood Plain located on this 45-acre parcel. If allowed to build in the Flood plain how will this impact the safety of our homes as well as our children and animals. Health concerns would arise from standing water if runoff is diverted. What type of impact would this have on property values or insurance costs? Prior to issuance of building permits in the floodplain, the applicant will be required to perform and submit for approval a drainage study (hydrologic and hydraulic analyses) in accordance with standard engineering practice and the City's Unified Development Code. This study must demonstrate plans where the drainage system peak flows are managed and accounted. Furthermore, the land owner remains responsible if he/she creates a drainage impact to any adjacent and downstream properties. Drainage studies of this nature tend to be costly and are typically performed subsequent to establishing land use entitlements (zoning, SUP's, etc.) from the governing jurisdictions. This may include a Water Pollution Abatement Plan (WPAP) if required by TCEQ due to proximity to the Edwards Aquifer Recharge Zone.
- How long is a Special Permit issued for; life of property under current owner? Is the Special Use Permit transferrable? Just like zoning, approval of a SUP goes with the land not the owner.
- Can a Special Permit be revoked? The City's Legislative body (City Council) has the authority to approve, revoke, and modify all SUP's.

- Will a Special Use Permit allow for easier re-zoning by the property owner or additional Special Use Permit applications? Zoning regulates the use of land. Once established, the City Council has the discretion to approve or disapprove requests for changes to the zoning map. The adopted future land use map is one of many tools utilized to evaluate zoning change applications.
- How many Special Use Permits may a property owner hold? No limit but all SUP applications require public notice and public hearings.
- Would a Special Use Permit have any effect, positive or negative, on neighboring homes? SUP's are uses that zoning ordinances permit but are screened and specially approved based on particular conditions and suitability. Regarding this particular SUP application, staff does not believe the proposed use will have a significant impact on the health, safety and welfare of the surrounding neighborhoods.
- Will a Special Use Permit make it easier for the property owner to apply for FEMA approval of building in the flood plain or obtaining any type of City permit? No. FEMA approvals are based on hydrologic and hydraulic engineering analyses. Land Use entitlements (Zoning, SUP's, etc.) are not authorization to modify the floodplain.

As we discussed I do not believe we would have any opposition to an Equine Boarding Facility at this location; if that is all it is. However, we would want to know how the following would be addressed?

- How many horses could be boarded at this facility? (Assumption a horse requires a certain amount of footage to maintain its health.) Is there a possibility they could Board something other than horses? The City does not regulate the number of horses. However, the Texas Administrative Code (TAC) provides standards relative to concentrated feeding, disposal of manure, etc. (see Exhibit 9). The applicant has stated he intends to build 10-12 stalls but only wants to board 5-6 horses. The remaining stalls are programmed to allow the property owner to grow their herd.
- What type of amenities would be available? Additional clarification is needed to respond to this question. Please refer to the applicant's letter and site plan to determine if it addresses your definition of amenities.
- What is the requirement for safe disposal of manure? (We wouldn't want it piled up in a heap near our home or buried to leach into our water source.) The applicant has stated they intend to contract for commercial disposal of manure. Activities of this nature are regulated by the Texas Administrative Code (TAC). The TAC allows for the disposal of manure in the floodplain on certain conditions. The TAC is attached as Exhibit 9. Further, Chapter 2, Section 2.04.004 of the City Code of Ordinances states that the owner of every animal shall be responsible for the removal of any excreta deposited by their animal(s) on public walks, recreation areas, public or private property, including the property of the owner.
- Would they be allowed to have horse shows? The applicant has indicated they may try to host small teaching clinics and/or shows. The City Council has the authority to approve or disapprove shows as a condition.
- Would there be arena lighting, or extra lighting of some kind somewhere? If the SUP is approved, lighting will be discussed and reviewed as part of the owners building permit application. One of the staff recommended conditions is to ensure compliance with the City's Dark Sky Regulations.

- Additional noise and pollution? Additional clarification is needed to respond to this question. Please refer to the applicant's letter and site plan to determine if it addresses your definition of noise and pollution.
- Effect on traffic? Based on the small scale of the proposal, a traffic impact study is not required. Accordingly, staff does not believe there will be a significant traffic impact. However, the applicant has indicated they may desire to host small private teaching clinics and small private shows in the future. A discussion regarding traffic control and additional off-street parking may be warranted depending on the size and number of clinics/shows.
- Would they build a parking lot for cars and or horse trailers? Off-street parking will be provided as shown on the attached site plan.
- Would they build structures of any kind in the flood plain; e.g. barns, sheds, corals, arenas, etc. The applicant's letter indicates the only new structure will be a roof to cover the existing open-air arena.
- Depending on the size of the commercial equine boarding facility we will assume there will be a need to hire employees to run this facility. Would some employee(s) live on site? The application package and statement does not include a request for employee housing. Regardless of the SUP, the existing zoning on the property allows for a guest house.
- Will this facility operate 24/7 or will there be specific hours of operation? The City does not govern the hours of operation for businesses.
- Did we mention we're concerned about flooding? Yes, see response to your first bullet point.

We will watch for the posting of this application online at the Fair Oaks Ranch City website this coming October 4th. We also plan to attend the Oct. 10th hearing. We would like to thank you in advance for the time it will take to address our questions and concerns.

Always With HOPE,
Garry & Christine Graham
30352 Setterfeld Circle

TCEQ

Does the operation require any authorization? No. Only notification is needed.

Large Concentrated Animal Feeding Operation (CAFO)

An AFO with the number of animals in the following table, is considered a large CAFO and must obtain written authorization from the TCEQ.

HEAD	ANIMAL TYPE
1,000	veal calves and cattle other than mature dairy cattle
700	mature dairy cattle (whether milking or dry cows)
2,500	swine weighing 55 pounds or more
10,000	swine weighing less than 55 pounds
5,000	ducks (liquid manure handling system)
30,000	ducks (not using liquid manure handling system)
500	horses
10,000	sheep or lambs
55,000	turkeys
82,000	laying hens (not using liquid manure handling system)
30,000	laying hens or broilers (liquid manure handling system)
125,000	chickens (other than laying hens, if not using liquid waste handling system)

Medium CAFO

An AFO located in the Dairy Outreach Program Area (Erath, Bosque, Hamilton, Comanche, Wood, Rains, and Hopkins Counties) with the number of animals in the following table is considered a medium CAFO. All medium CAFOs in these counties must obtain written authorization from the TCEQ.

HEAD	ANIMAL TYPE
300 to 999	veal calves and cattle other than mature dairy cattle
200 to 699	mature dairy cattle (whether milking or dry cows)
750 to 2,499	swine weighing 55 pounds or more
3,000 to 9,999	swine weighing less than 55 pounds
10,000 to 29,999	ducks (not using liquid manure handling system)
1,500 to 4,999	ducks (liquid manure handling system)
150 to 499	horses
3,000 to 9,999	sheep or lambs
16,500 to 54,999	turkeys
25,000 to 81,999	laying hens (not using liquid manure handling system)
9,000 to 29,999	laying hens or broilers (liquid manure handling system)
37,500 to 124,999	chickens (other than laying hens, if not using liquid waste handling system)

Small CAFO

Any AFO may be designated a small CAFO by the executive director because it is a significant contributor of pollutants into or adjacent to water in the state. Any AFO that is designated a small CAFO must obtain written authorization from the TCEQ.

Other Animal Feeding Operations

AFOs not defined or designated as CAFOs are authorized by the permit by rule found in 30 TAC Chapter 321.47. If you are an AFO but not a CAFO, you must submit a notification form and comply with the permit by rule. If you need technical assistance with your AFO, contact the [Texas State Soil and Water Conservation Board](#) (TSSWCB) or the USDA [Natural Resource Conservation Service](#) (NRCS).

- ➔ ▪ Limitations on number of horses per acre – determined by P&Z/City
- Operation **MUST** abide by the following rule –

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PART 1

CHAPTER 321

SUBCHAPTER B

RULE §321.47

ENVIRONMENTAL QUALITY

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CONTROL OF CERTAIN ACTIVITIES BY RULE

CONCENTRATED ANIMAL FEEDING OPERATIONS

Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated as Concentrated Animal Feeding Operations (CAFOs)

IMPORTANT ITEMS

Land application.

- The runoff of manure, sludge, or wastewater to water in the state as the result of the application of manure, sludge, or wastewater from an AFO is authorized provided the land application activity is implemented in accordance with a plan for nutrient management detailed in this section.
- The AFO operator shall apply manure, sludge, and wastewater uniformly to suitable land at appropriate times and at agronomic rates. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions.
- Discharge of manure, sludge, or wastewater from the land management unit is prohibited and shall not cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create a nuisance condition.
- Land application shall not occur during rainfall events.
- Manure, sludge, or wastewater may be applied to the areas in the 100-year flood plain at agronomic rates not to exceed the hydrologic needs of the crop.
- Manure or sludge stored for more than 30 days must be stored within the drainage area of a retention control structure, or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents contaminated stormwater runoff from the storage area. Storage for more than 30 days is prohibited in the 100-year flood plain.

Temporary storage of manure and sludge shall not exceed 30 days and is allowed only in land management unit or a retention control structure drainage area. Temporary storage of manure or sludge in the 100-year flood plain, near water courses or recharge features is prohibited unless protected from inundation and damage that may occur during the 100-year flood event. Contaminated runoff from manure and sludge storage piles must be retained on site.



Healthy Manure Storage Tips

1. Divert clean water away from manure:
 - Construct berms, terraces or waterways, and/or use downspouts to divert clean water away from corrals and manure storage areas.
2. Ensure manure discharge will not enter a water body or leave the property:
 - Limit animal access to ponds, streams, ditches, and wetlands.
 - Collect manure frequently.
 - Stockpile manure at least 100 feet outside a floodplain.
 - Do not stockpile manure in a dry creek bed or ditch.
3. Protect ground water:
 - Locate manure storage piles and livestock corrals at least 150 feet down-gradient from wells.
 - Use a 150-foot buffer around wells when land applying manure.
4. Reduce nuisances like flies and odor:
 - Stockpile manure downwind from barns and 200 feet away from neighbors.
 - Plant trees to reduce wind and odor from stockpiles.
 - Keep a lid on manure dumpsters.
 - Remove manure from corrals and pens every few days to prevent flies, parasites, and worms.
 - Cover fresh manure in stockpiles with at least 5 inches of clean bedding, straw, or hay to prevent flies.
 - Prevent flies by using pesticides or fly predatory wasps (non-stinging) which can be purchased to manage flies.

Manure Disposal Options

1. **Dispose off-site** to a landfill that accepts manure or hire someone to pick-up and dispose of manure for you.
2. **Compost manure.** This requires the right ratio of carbon (bedding or leaves) and nitrogen (manure). Try 30 carbon to 1 nitrogen by volume. Water to keep the pile 50% moist and aerate the pile regularly.
3. **Spread manure.** Spread in spring or summer. Test manure for nutrient content and spread based on soil test recommendations. This will ensure the nutrients are being utilized by the vegetation growing. Unused nutrients can pollute water bodies and groundwater. Remember that raw manure may contain weed seeds which will be spread back on the land.

➔ **Regulated Activity in the Edwards Aquifer Recharge Zone**
Water Pollution Abatement Plan REQUIRED

What is a water pollution abatement plan (WPAP)?

A WPAP is a detailed plan that outlines best management practices that will be implemented in order to protect water quality when a **regulated activity**.

Who is required to prepare and submit a WPAP?

A water pollution abatement plan is required for any regulated activity proposed in the Edwards Aquifer recharge zone. This includes any construction-related activity, such as:

- the construction of buildings, utility stations, roads, highways, railroads
- clearing, excavation, or any other activities that alter or disturb the topographic, geologic, or existing recharge characteristics of a site
- any other activities with a potential for contaminating the Edwards Aquifer and hydrologically connected surface streams

When should a WPAP be submitted to the TCEQ?

A WPAP must go through the **application submission and review** process and be approved prior to the commencement of construction or other regulated activities.

➔ **Fair Oaks Ranch MS4**
What does it say in regards to animal operations?

Animal Sources

Expand existing management programs to identify and target animal sources such as zoos, pet waste, and horse stables.

Texas Administrative Code

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[SUBCHAPTER B](#)

CONCENTRATED ANIMAL FEEDING OPERATIONS

RULE §321.47

Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated As Concentrated Animal Feeding Operations (CAFOs)

(a) Purpose. This section provides an animal feeding operation (AFO) that is not defined or designated as a concentrated animal feeding operation (CAFO) authorization to operate, and identifies the operational requirements necessary to achieve the purposes of this subchapter.

(b) Applicability.

(1) Except as identified in paragraph (2) of this subsection, the owner or operator of an AFO not defined or designated as a CAFO who uses a control facility to manage manure, sludge, or wastewater generated on site shall comply with all the requirements of this section.

(2) The owner or operator of an AFO not defined or designated as a CAFO who qualifies for, obtains, and is operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board (TSSWCB) and subsection (c)(1) - (4) of this section are considered to meet all technical requirements of this section.

(3) The owner of an AFO not defined or designated as a CAFO who uses an alternative treatment practice, such as filter strips (Natural Resources Conservation Service (NRCS) Code 393), constructed wetlands (NRCS Code 656), or vegetated treatment areas (NRCS Code 635), instead of a control facility to manage manure, sludge, or wastewater generated on site shall comply with all the requirements of this section except the requirements mentioned in subsection (d) and (e) of this section.

(c) General requirements.

(1) An AFO operator must locate, construct, and manage the control facility, alternative treatment practice, and land management unit (LMU) in a manner that will protect surface and groundwater quality.

(2) An AFO operator must prevent nuisance conditions and minimize odor conditions in accordance with the requirements of §321.31(b) of this title (relating to Manure, Litter, and Wastewater Discharge and Air Emission Limitations).

(3) Proper pen drainage shall be maintained at all times. Earthen pen areas shall be maintained to ensure good drainage by scraping uncompacted manure and shaping pen surfaces as necessary to minimize odors and ponding.

(4) An AFO shall not expand operations, either in size or numbers of animals, before amending or enlarging the manure handling procedures and structures to accommodate all additional manure that will be generated by the expanded operations.

(5) As applicable to the operation, the production area of a new or expanding AFO must comply with the requirements of §321.41 of this title (relating to Special Requirements for Discharges to a Playa).

(6) All control facilities, alternative treatment practices, holding pens, and retention control structures (RCSs) must be located outside of the 100-year flood plain unless the structures are protected from inundation and damage that may occur during the 100-year flood event.

(7) Where applicable, equivalent measures contained in a site-specific plan which meet the requirements of this subchapter may be substituted for applicable best management practices and/or portions of the technical requirements in this subchapter. Equivalent measures may be contained in:

(A) United States Department of Agriculture (USDA) - NRCS Field Office Technical Guide for Texas; or

(B) TSSWCB rules; or

(C) a certified water quality management plan certified by the TSSWCB; or

(D) a comprehensive nutrient management plan (CNMP) certified by the TSSWCB, the USDA - NRCS, or their designee.

(8) The AFO operator shall adhere to the well buffer requirements in §321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)) and §321.40(g) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements).

(d) Control facilities.

(1) The AFO operator shall minimize entry of uncontaminated runoff into RCSs. Such measures may include the construction of berms, embankments, or similar structures.

(2) The AFO may discharge from the production area if the discharge is the result of a chronic or catastrophic rainfall event, or catastrophic condition that exceeds the design capacity of an RCS that has been properly designed, constructed, operated, and maintained. RCSs shall be designed in accordance with §321.38 of this title.

(3) The AFO operator constructing a new or modifying an existing RCS shall ensure that all construction and design is certified by a licensed Texas professional engineer. The certification shall be signed and sealed in accordance with the requirements of the Texas Board of Professional Engineers. All RCS design and construction shall, at a minimum, be in accordance with the technical standards developed by the NRCS, American Society of Agricultural and Biological Engineers, American Society of Civil Engineers, American Society of Testing Materials, or other technical standards approved by the executive director, that are in effect at the time of construction. Where site-specific variations are warranted, the operator must ensure a licensed Texas professional engineer documents these variations and their appropriateness to the plan.

(4) Existing RCSs that have been properly maintained without any modifications and have no apparent structural problems or leakage will be considered to be properly designed and constructed with respect to the RCS sizing, embankment design and construction, and liner requirements of this subchapter, provided that any required documentation was completed in accordance with the requirements at the time of construction. If no documentation exists, the RCS must be certified by a licensed Texas professional engineer as providing protection equivalent to the requirements of this section. Structures built in accordance with site-specific NRCS plans and specifications will be considered to be in compliance with the design and capacity requirements of this subchapter if the site-specific conditions are the same as those used by the NRCS to develop the plan (numbers of animals, runoff area, manure generated, etc.) and the RCS is operated and maintained in accordance with NRCS requirements.

(5) RCS embankments and liners shall be designed and constructed in accordance with the requirements of §321.38 of this title.

(6) The AFO operator must maintain copies of documentation of the sources of information, assumptions, and calculations used in determining the appropriate volume capacity of the RCSs.

(7) An irrigation system or other liquid manure removal system used by an AFO must be designed to ensure that the system is capable of dewatering the RCSs on a regular schedule. RCSs shall be equipped with irrigation, or wastewater removal systems capable of dewatering the RCSs whenever needed to restore the operating capacity. Dewatering equipment shall be maintained in proper working order.

(8) Sludge shall be removed from RCSs to prevent the accumulation of sludge from encroaching on other required storage volumes.

(e) Operation and maintenance.

(1) Sufficient volume shall be maintained at all times within the RCS to accommodate sludge, wastewaters, and contaminated stormwater (rainwater runoff and direct precipitation) from the AFO facility.

(2) The operator shall restore such capacity after each rainfall event or accumulation of manure, sludge, or process-generated wastewater that reduces such capacity, when conditions are favorable for irrigation. Favorable conditions shall be when the soil moisture level decreases so that irrigation will not cause runoff.

(3) The normal operating wastewater level in the RCS shall be maintained within the design of the RCS. If the water level in the RCS encroaches into the storage volume reserved for the design rainfall event the operator must document the conditions that resulted in this occurrence. As soon as irrigation is not prohibited, the AFO operator shall irrigate until the water level is at or below the design rainfall level.

(4) Adequate equipment shall be available and maintained in good working order to remove such manure, sludge, and wastewater from the RCS as required to maintain the required volume in compliance with this subchapter.

(5) A rain gauge capable of measuring the design rainfall event shall be installed on site and properly maintained.

(6) The AFO operator shall install and maintain a permanent pond marker in the RCS, visible from the top of the embankment that identifies, either physically or by onsite documentation, the volume required for the design rainfall event.

(7) The AFO operator shall ensure that liners are protected from animals by fences or other protective devices. No tree shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner or embankment. Any mechanical or structural damage to the liner shall be evaluated by a licensed Texas professional engineer within 30 days following discovery of the damage.

(8) The AFO operator shall maintain ponds, pipes, ditches, pumps, and diversion and irrigation equipment to ensure ability to fully comply with the terms of this subchapter.

(9) An AFO operator using a liquid manure handling system shall scrape or flush accumulated manure at least once per week or in accordance with proper design and maintenance of the facility.

(10) If an RCS is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions, the AFO operator shall take reasonable steps to irrigate wastewater to LMUs only to the extent necessary to prevent overflow from the RCS.

(f) Land application.

(1) The runoff of manure, sludge, or wastewater to water in the state as the result of the application of manure, sludge, or wastewater from an AFO is authorized provided the land application activity is implemented in accordance with a plan for nutrient management detailed in this section.

(2) The AFO operator shall apply manure, sludge, and wastewater uniformly to suitable land at appropriate times and at agronomic rates. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions.

(3) The AFO operator shall develop and utilize the information in this paragraph for land application unless a nutrient management plan (NMP) is developed and implemented. At that time, the NMP must be followed for land application. The AFO operator must adhere to the following:

(A) a site map showing the location of all LMUs;

(B) the location, description, and limitations of the major soil types within the identified LMUs, and a plan to address the soil limitations;

(C) crop types and rotations to be implemented on an annual basis;

(D) predicted yield goals based on the major soil types within the identified LMUs;

(E) procedures for calculating nutrient budgets to be used to determine application rates;

(F) a detailed description of the type of equipment and method of application to be used in applying the manure, sludge or wastewater; and

(G) projected rates and timing of application of the manure, sludge, and wastewater as well as other sources of nutrients that will be applied to the LMUs.

(4) Discharge of manure, sludge, or wastewater from the LMU is prohibited and shall not cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create a nuisance condition.

(5) Application rates of manure, sludge, and wastewater shall not exceed the crop requirement of the crop or planned crop planting. Land application rates of manure sludge, and wastewater shall be based on the available nutrient content of the manure, sludge, and wastewater.

(6) Land application shall not occur when the ground is frozen or saturated or during rainfall events, unless in accordance with §321.39(b)(3) of this title (relating to Operational Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)).

(7) Irrigation practices shall be managed so as to minimize ponding or puddling of wastewater on the site, prevent discharge of tailwater to waters in the state, prevent pollution of waters in the state, and prevent the occurrence of nuisance conditions.

(8) The land application of manure, sludge, and wastewater at agronomic rates shall not be considered surface disposal and is not prohibited.

(9) Manure, sludge, or wastewater may be applied to the areas in the 100-year flood plain at agronomic rates not to exceed the hydrologic needs of the crop.

(10) The AFO operator shall develop and maintain the calculations and assumptions used for determining land application rates and all nutrient analysis data.

(11) The AFO operator shall annually analyze at least one representative sample of irrigation wastewater and sludge, if applicable, and one representative sample of manure for total nitrogen, total phosphorus, and total potassium.

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(12) Vegetative buffer strips shall be no less than 100 feet of vegetation to be maintained between manure, sludge, or wastewater application areas and surface water and watercourses. The AFO operator shall maintain the buffer strips in accordance with NRCS guidelines. A buffer is not required for wastewater irrigation when applied by low-pressure, low-profile center pivot irrigation systems in areas of the state where the annual average rainfall is less than 25 inches per year. Land application of manure, sludge, and wastewater into surface water in the state is an unauthorized discharge and is prohibited.

(13) Manure and sludge storage capacity requirements based upon manure and sludge production, land availability, and NRCS or equivalent standards shall be provided.. Manure or sludge stored for more than 30 days must be stored within the drainage area of an RCS, or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents contaminated stormwater runoff from the storage area. Storage for more than 30 days is prohibited in the 100-year flood plain.

(14) Temporary storage of manure and sludge shall not exceed 30 days and is allowed only in LMUs or an RCS drainage area. Temporary storage of manure or sludge in the 100-year flood plain, near water courses or recharge features is prohibited unless protected from inundation and damage that may occur during the 100-year flood event. Contaminated runoff from manure and sludge storage piles must be retained on site.

(15) Any dairy AFO that is located in the major sole-source impairment zone, as defined under §321.32 of this title (relating to Definitions), at a minimum must provide for management and disposal of manure in accordance with §321.42(i) of this title (relating to Requirements Applicable to the Major Sole-Source Impairment Zone).

(16) Nighttime application of liquid or solid manure shall be allowed only in areas with no occupied residence(s) within 1/4 mile from the outer boundary of the LMU receiving manure, sludge, or wastewater application. In areas with an occupied residence within 1/4 mile from the outer boundary of the LMU, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have, in writing, agreed to such nighttime applications.

(17) AFOs introducing wastewater or chemicals to water wellheads for the purpose of irrigation shall install backflow prevention devices in accordance with requirements contained in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

(18) Composting on site at an AFO shall be performed in accordance with Chapter 332 of this title (relating to Composting). AFOs may compost manure generated on site, including manure, sludge, bedding, feed, and dead animals. In accordance with Chapter 332 of this title, an AFO operator may add agricultural products to provide an additional carbon source or bulking agent to aid in the composting process. If the compost areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff in the case of the design rainfall event, the compost areas shall be located within the drainage of the RCS. The runoff volume from compost areas shall be accounted for in the design of the RCS.

(19) Maintenance of animals.

(A) Animals confined at the AFO shall be restricted from coming into direct contact with surface water in the state through the use of fences or other controls.

(B) An AFO that maintains animals in pastures must maintain crops, vegetation, forage growth, or postharvest residues in the normal growing season, excluding the feed and water trough areas and designated open lots.

(g) Sampling and testing.

(1) Initial sampling. Before commencing application of manure, sludge, or wastewater on LMUs and before resuming land application on LMUs. Where manure, sludge, or wastewater was not applied during the preceding year, the operator shall:

(A) collect and analyze at least one representative sample of manure, sludge (if applicable) and wastewater for total nitrogen, total phosphorus, and total potassium;

(B) collect and analyze at least one representative soil sample from each LMU according to the procedures in paragraphs (4) and (5) of this subsection; and

(C) Utilize the results of these analyses in determining application rates for manure, sludge, and wastewater.

(2) Annual sampling. The operator shall:

(A) collect and analyze at least one representative sample of manure, sludge (if applicable), and wastewater, for total nitrogen, total phosphorus, and total potassium;

(B) collect and analyze at least one representative soil sample from each LMU where manure, sludge, or wastewater was applied during the preceding year according to the procedures in paragraphs (4) and (5) of this subsection; and

(C) utilize the results of these analyses in determining application rates for manure, sludge, and wastewater.

(3) The operator shall make the most recent nutrient analysis available to any recipient of manure, sludge, or wastewater.

(4) Sampling procedures. The operator shall employ sampling procedures using accepted techniques of soil science for obtaining representative samples and analytical results.

(A) Samples shall be collected using approved methods described in the agency's guidance RG-408 entitled "Soil Sampling for Concentrated Animal Feeding Operations."

(B) Samples shall be collected by the operator or its designee and analyzed by a soil testing laboratory annually.

(C) Obtain one composite sample for each LMU and per uniform soil type (soils with the same characteristics and texture) within the LMU.

(D) Composite samples shall be comprised of ten to 15 randomly sampled cores at a depth of zero to six inches.

(5) Laboratory analysis. The operator shall have a laboratory analysis of the soil samples performed for physical and chemical parameters to include: nitrate reported as nitrogen in parts per million (ppm); phosphorus (extractable, ppm, using Mehlich III extractant with Inductively Coupled Plasma (ICP) analysis); potassium (extractable, ppm); sodium (extractable, ppm); magnesium (extractable, ppm); calcium (extractable, ppm); soluble salts (ppm) or electrical conductivity (deciSiemens/meter (dS/m) or millimhos/cm (mmhos/cm) determined from extract of 2:1 volume to volume (v/v) water/soil mixture); and soil water pH (soil:water, 1:2 ratio).

(6) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use, and yield goal. Soil test reports shall include nutrient recommendations for the crop yield goal.

(h) Nutrient utilization plans (NUPs).

(1) Manure, sludge, or wastewater shall not be land applied to a LMU, unless the land application is implemented in accordance with a detailed NUP when results of the annual soil analysis for extractable phosphorus indicate:

(A) a level greater than 200 ppm; or

(B) a level greater than 350 ppm for an LMU where the average annual rainfall is 25 inches or less, erosion control is adequate to keep erosion at the soil loss tolerance (T) or less, and the closest edge of the field is more than one mile from a named stream; or

(C) if ordered by the commission to do so in order to protect water in the state.

(2) An NUP, based on crop removal, certified in accordance with NRCS Practice Standard Code 590 complies with the requirements of a complete and effective NUP.

(3) A NUP, based on crop removal, shall be developed by an employee of the NRCS, a nutrient management specialist certified by the NRCS, the TSSWCB, Texas AgriLife Extension Service, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the American Registry of Certified Professionals in Agronomy, Crops and Soils, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner. No land application under an approved NUP shall cause or contribute to a violation of water quality standards or create a nuisance.

(4) Land application under the terms of the NUP may begin as soon as the plan is developed in accordance with this subsection. After a NUP has been implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below 200 ppm. Thereafter, the AFO operator shall apply manure, litter, or wastewater at agronomic rates according to the requirements of this section.

(i) Recordkeeping requirements.

(1) Records required under this subsection must be kept on site for a minimum of five years from the date the record was created. Any AFO operator that does not use an RCS is not subject to subparagraphs (B) - (D) and (F). Unless otherwise specified, records shall include:

- (A) a list of any significant spills of pollutants with the potential to reach water in the state;
- (B) a schedule for liquid manure removal;
- (C) a date log indicating weekly inspection of wastewater level in the RCS;
- (D) a log of all measurable rainfall events;
- (E) a copy of the results of initial and annual soils, manure, sludge, and wastewater analyses;
- (F) records of dates of inspection of the RCS, and a log of the findings of such inspections;
- (G) the groundwater monitoring plan associated with the use of a playa;
- (H) site-specific documentation that no significant hydrologic connection exists between the wastewater in the RCS and water in the state;
- (I) any written agreement with a landowner which documents the allowance of nighttime application of manure, sludge, or wastewater; and
- (J) a copy of the NUP, if required.

(2) For facilities where manure, sludge, or wastewater is applied on LMUs, such records shall include the following information:

- (A) the date of manure, sludge, or wastewater application to each field;
- (B) the location of the specific LMU and volume or amount applied during each application event;
- (C) the acreage of each individual crop on which manure, sludge, or wastewater is applied;
- (D) the assumptions for calculating the total amount of nitrogen and phosphorus applied per acre to each field, including sources of nutrients other than manure, sludge, and wastewater on a dry basis;
- (E) the percentage of moisture content of the manure and sludge; and
- (F) the actual annual yield of each harvested crop.

(3) Where manure, sludge, or wastewater, if applicable, is sold or given to other persons for off-site land application or disposal, the operator must maintain a log of: the date of removal from the AFO; the name and address of the recipient; and the amount, in wet tons, dry tons, or cubic yards, of manure or gallons of wastewater removed from the AFO. (A single pickup load need not be recorded.)

(j) Documentation of liner maintenance. The operator shall have an NRCS engineer, licensed Texas professional engineer, or licensed Texas professional geoscientist review the documentation and conduct a site evaluation every five years.

(k) Groundwater monitoring. In the event that groundwater monitoring is required by §321.41 of this title or required by the executive director, the operator shall annually collect a groundwater sample from each well that provides water for the facility. Each sample shall be analyzed for nitrate as nitrogen and chloride where groundwater monitoring is required by §321.41 of this title and analyzed for nitrate as nitrogen, chloride, and total dissolved solids where groundwater monitoring is required by the executive director. The operator shall use the methods outlined in the groundwater monitoring plan, and compare the analytical results to the baseline data. Data from any required monitoring wells must be submitted to the executive director and kept on site for five years. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility, unless otherwise provided by the executive director. If a 10% deviation in concentration of any of the sampled constituents is found, the operator must notify the executive director within 30 days of receiving the analytical results.

(l) Inspections. The AFO operator must conduct the following inspections to assure the facility maintains its efficiency. Records of inspections shall be maintained for a period of five years.

(1) Preventative maintenance program. The operator shall conduct weekly inspections of the control facility and land application equipment to determine preventative maintenance or repair needs. Operators that do not use an RCS are required to conduct inspections for applicable portions of their operation as required by this section. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system or the creation of a nuisance. Inspections shall include visual inspections and equipment testing to uncover conditions that could cause breakdowns [Cont'd...](#)

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or failures resulting in discharge of pollutants to water in the state or the creation of a nuisance condition.

(2) Site inspection. A complete inspection of the control facility and LMUs shall be done and a report documenting the findings of the inspection made at least once a year. The inspection shall be conducted by the operator to verify that the description of potential pollutant sources is accurate, and the controls necessary to reduce pollutants and avoid nuisance conditions are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained.

(m) Notification. An existing or new AFO operator has the continuing obligation to provide the executive director notice of the number of animals in confinement in accordance with the following requirements.

(1) All new AFOs which confine a number of animals that fall within the range of the number of animals specified in any of the categories under §321.32(13)(B) of this title shall notify the executive director of their legal entity name, physical location including a map or hand drawn sketch, mailing address, and number of head in confinement.

(2) Such notification shall be in writing and signed by the operator and shall be submitted not later than 180 days after commencement of operation.

(n) Closure required. The AFO operator shall properly close the AFO and RCS in accordance with a closure plan prepared by a licensed Texas professional engineer. The AFO and RCS must be closed within one year of permanently ceasing operations at the facility or an alternate schedule determined by a licensed Texas professional engineer. The closure plan for the RCS must be developed using standards contained in the NRCS Practice Standard Code 360 (Closures of Waste Impoundments, as updated) and using the guidelines contained in the Texas AgriLife Extension Service/NRCS publication #B-6122 (Closure of Lagoons and Earthen Manure Storage Structures, as updated). The RCS or AFO is considered to be properly closed upon certification by a licensed Texas professional engineer that closure is complete according to the closure plan. AFOs shall maintain compliance with the requirements of this subchapter until the facility has been properly closed.

Source Note: The provisions of this §321.47 adopted to be effective July 27, 1999, 24 TexReg 5721; amended to be effective July 15, 2004, 29 TexReg 6652; amended to be effective July 31, 2014, 39 TexReg 5786

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