

Donna Campbell, M.D.

Texas State Senator
District 25

January 24, 2025

The Honorable Ken Paxton Attorney General of Texas Attn: Opinion Committee PO Box 12548 Austin, TX 78711-2548 opinion.committee@oag.texas.gov

% Austin Kinghorn, Associate Deputy Attorney General, Opinion Committee

RE: Request for Legal Opinion on Procedural Requirements and Notifications Related to Texas Local Government Code, Chapter 211.

General Paxton,

I am writing to seek clarification on several points regarding procedural requirements for zoning cases. Constituents have raised concerns over potential misinterpretations of the Texas Local Government Code (Chapter 211, Section 211.006) as it relates to zoning procedures, notification requirements, and eligibility for protests.

To ensure compliance and procedural consistency, I would appreciate a legal opinion on the following:

- 1. **Notification Requirements:** Texas Local Government Code §211.006 outlines notification responsibilities, yet there appears to be ambiguity in who qualifies to receive notifications in relation to municipal tax rolls and jurisdictional boundaries. Could you clarify if property owners within 200 feet of the proposed zoning change—whether within or outside city limits—are entitled to notification regardless of their presence on municipal tax rolls?
- 2. **Criteria for Valid Protest Eligibility:** Section 211.006(d) of the Code requires a three-fourths majority vote if there is a valid protest from at least 20% of owners within the affected area. The statute does not explicitly state whether property owners outside city limits or those unlisted on the tax rolls are eligible to file a valid protest. Could you clarify if all property owners within the designated radius, regardless of municipal tax roll status, have the right to protest, and what criteria determine valid protests in these cases?
- 3. **Procedural Consistency and Verification of Protest Eligibility:** Reports suggest discrepancies in how the notification area was determined, potentially affecting the calculation of the 20% protest threshold. Would you provide guidance on the standard procedural requirements for verifying eligibility for notification and protest, as well as the role of external (e.g., county-level) records in ensuring accurate notifications?

These points of clarification are essential for maintaining the integrity and transparency of the zoning decision-making process, particularly for impacted property owners. I appreciate your time in providing a legal perspective on these questions, as it will support clarity and procedural compliance for current and future cases.

Enclosed with this request, I also submit to your office the City of San Antonio's Case Z-2024-10700119 as it relates to the requested opinion and Texas Local Government Code (Chapter 211, Section 211.006 and Section 211.007) as it relates to Municipal Zoning Authority.

Should you have any questions about this Attorney General Opinion request, please email my chief of staff, Shane Birdwell, at shane.birdwell@senate.texas.gov or (512) 463-0125.

Sincerely,

Senator Donna Campbell

Senate District 25

Senate Committee on Nominations, Chair

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1. ZONING CASE Z-2024-10700119 ERZD (Council District 9): A request for a change in zoning from "C-2 GC-3 MLOD-1 MLR-2 ERZD" Commercial US 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 Edwards Recharge Zone District to "MF-33 GC-3 MLOD-1 MLR-2 ERZD" Multi-Family US 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 Edwards Recharge Zone District on Lot P-15, CB 4865 and Lot P-1 CB 4866, located at 26449 Smithson Valley Road and 26449 Trinity Park. Staff recommends Approval. (Eradio Gomez, Senior Planner, 210-207-0197, Eradio.Gomez@sanantonio.gov, Development Services Department)



City of San Antonio

Agenda Memorandum

Agenda Date: October 15, 2024

In Control: Zoning Commission Meeting

DEPARTMENT: Development Services Department

DEPARTMENT HEAD: Amin Tohmaz, Interim Director

COUNCIL DISTRICTS IMPACTED: District 9

SUBJECT:

ZONING CASE Z-2024-10700119 ERZD

SUMMARY:

Current Zoning: "C-2 GC-3 MLOD-1 MLR-2 ERZD" Commercial US 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 Edwards Recharge Zone District

Requested Zoning: "MF-33 GC-3 MLOD-1 MLR-2 ERZD" Multi-Family US 281 North Gateway Corridor Camp Bullis Military Lighting Overlay Military Lighting Region 2 Edwards Recharge Zone District

BACKGROUND INFORMATION:

Zoning Commission Hearing Date: October 15, 2024

Case Manager: Eradio Gomez, Zoning Senior Planner

Property Owner: Japhet Holdings LTD

Applicant: Japhet Holdings LTD

Representative: Patrick Christensen

Location: 26449 Smithson Valley Road and 26449 Trinity Park

Legal Description: Lot P-15, CB 4865 and Lot P-1 CB 4866

Total Acreage: 15.266 acres

Notices Mailed

Owners of Property within 200 feet: 14

Registered Neighborhood Associations within 200 feet: N/A

Applicable Agencies: Planning Department, SAWS, Camp Bullis Military Base

Property Details

Property History: The property was annexed into the of City of San Antonio by Ordinance 201612010899, dated November 30, 2016, and zoned "C-2" Commercial District.

Code & Permitting History:

There is no code enforcement or permitting history for the subject property.

Topography: The property does not include any abnormal physical features such as slope or inclusion in a floodplain.

Adjacent Base Zoning and Land Uses

Direction: North

Current Base Zoning: "C-2"

Current Land Uses: Vacant Land, Single-Family Residential

Direction: South

Current Base Zoning: "C-2", "C-2 CD S"

Current Land Uses: Vacant Land, Conditional Use for a Machine Shop

Direction: East

Current Base Zoning: "OCL"

Current Land Uses: Single-Family Residential

Direction: West

Current Base Zoning: "C-2"

Current Land Uses: Auto Parts Store, Day Spa, Tire Shop

Overlay District Information:

The "MLOD-1" Camp Bullis Military Lighting Overlay District does not restrict permitted uses but does regulate outdoor lighting in an effort to minimize night-time light pollution and its effects on operations at the military installation.

The US 281 Gateway Corridor District ("GC-3") a provides site development standards for properties within 4,000 feet along the US 281 north right-of-way. The standards primarily address building placement, landscaping, building materials and signage to promote a coordinated development scheme for the Corridor. A zoning review is performed by the Zoning Section of the Development Services Department

The "ERZD" Edwards Recharge Zone District does restrict permitted uses, due to the environmentally sensitive nature of the recharge zone. Per Chapter 34 of the City of San Antonio

Code of Ordinances, the San Antonio Water System (SAWS) and City of San Antonio departments share regulatory jurisdiction over development within the "ERZD".

Special District Information:

No special district information.

Transportation

Thoroughfare: Bulverde Road

Existing Character: Secondary Arterial A

Proposed Changes: None Known

Thoroughfare: Trinity Park
Existing Character: No data.
Proposed Changes: None Known

Public Transit: There is no public transit within a ½ mile of the subject property.

Traffic Impact: A TIA and Proportional Mitigation Determination Report is required when a property is subject to master development planning, development permitting or rezoning. The traffic generated by the proposed development has increase, it does exceed the threshold requirements. Development generates more than seventy-six (76) PHT Sec. 35-502.

Parking Information: The minimum parking requirement for multi-family development is 1.5 spaces per unit. The maximum parking requirement for multi-family development is 2 spaces per unit.

ISSUE:

None.

ALTERNATIVES:

Current Zoning: "C-2" Commercial District accommodates community commercial uses, with unlimited building size, and building height limitation of 25 feet. Examples of permitted uses: liquor store, miniature golf and other indoor gaming facilities, small indoor movie theater, pet cemetery, auto & light truck oil, lube & tune-up, auto glass tinting, tire repair (sale and installation only), gas station, appliance sales & repair, charitable food & clothing banks and dry cleaning. No outdoor storage or display of goods shall be permitted except for outdoor dining.

Proposed Zoning: "MF-33" Multi-Family District permits any uses permitted in MF-33 with a maximum density of 33 units per acre."

FISCAL IMPACT:

None.

PROXIMITY TO REGIONAL CENTER/PREMIUM TRANSIT CORRIDOR:

The subject property is within the Stone Oaks Regional Center and not within a ½ mile of a Premium Transit Corridor.

RECOMMENDATION:

Staff Analysis and Recommendation: Staff and SAWS recommends Approval.

SAWS recommends no more than 50% impervious cover.

Criteria for Review: According to Section 35-421, zoning amendments shall be based on approval criteria below.

- 1. **Consistency:** The subject property is located within the North Sector Plan, adopted in 2010, and is currently designated as "Suburban Tier" in the future land use component of the plan. The requested "MF-33" base zoning district is not consistent with the future land use designation. The applicant will have to request a Plan Amendment to "General Urban Tier".
- 2. Adverse Impacts on Neighboring Lands: Staff does not find evidence of likely adverse impacts on neighboring lands in relation to this zoning change request. The proposed use is consistent with the established development pattern of the surrounding area.
- 3. Suitability as Presently Zoned: The existing "C-2" Residential Single-Family District is an appropriate zoning for the property and surrounding area. The proposed "MF-33" Multi-Family District is also an appropriate zoning. The subject property is appropriately located, access off an arterial street and provides a buffer between the commercial properties to the west from the single family residential to the east. The proposal is consistent with the goals of the Strategic Housing Implementation Plan which encourages the development of alternate housing types to accommodate the city's growing population at all income levels.
- **4. Health, Safety and Welfare:** Staff has not found indication of likely adverse effects on the public health, safety, or welfare.
- **5. Public Policy:** The request does not appear to conflict with any public policy objectives of the North Sector Plan:
 - HOU-1.1 Consider innovative allowances in zoning amendments that promote a variety of housing types in the North Sector and embrace flexible standards, including, but not limited to: zero lot lines, clustering of development, and density bonuses as per the Sector Land Use Plan.
 - HOU-1.2 Encourage compatible growth patterns and transitions of higher density residential along principal arterials and transit corridors that fit in with the existing residential character of the North Sector.
 - HOU Goal 2: High density housing is developed near post-secondary education facilities, principal and arterial transportation routes, and major employment areas.
 - Goal LU-1 Compatible land use pattern promoted so that natural resources are preserved and the local economy remains viable.
 - •Goal LU-6: Development of livable, walkable communities is encouraged.

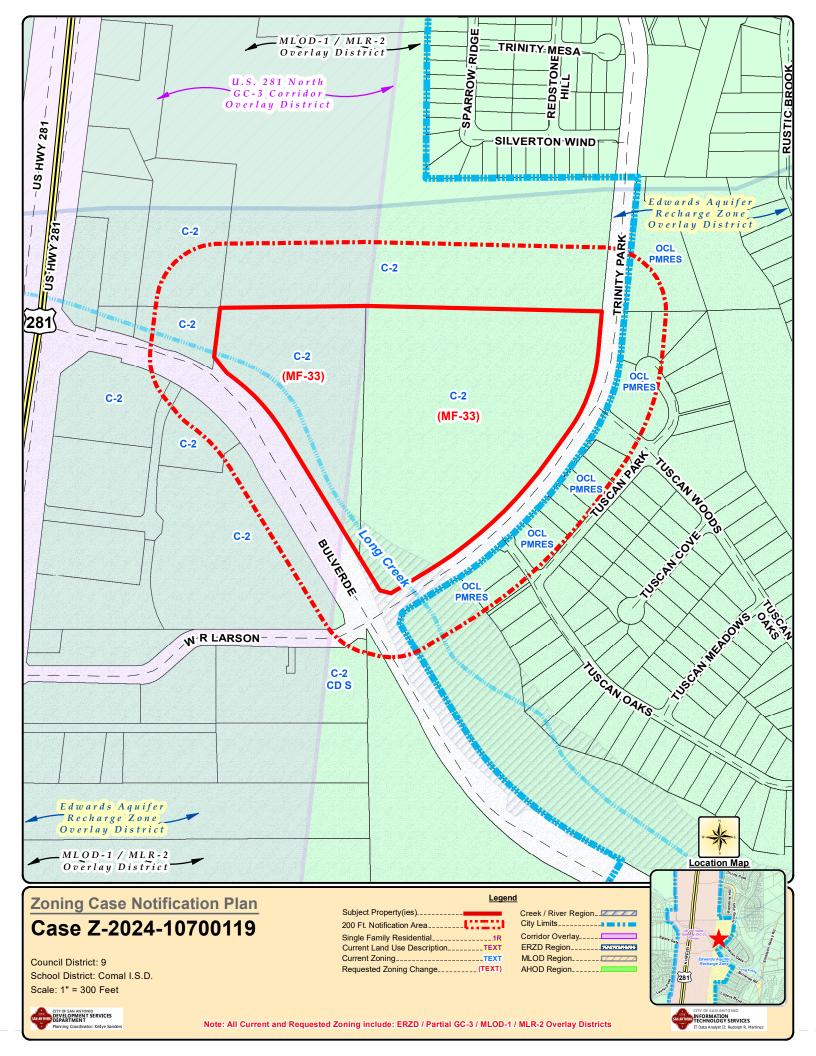
Relevant Goals and Policies of the Comprehensive Plan may include:

- •GCF Goal 1: Higher-density uses are focused within the city's 13 regional centers and along its arterial and transit corridors.
- •GCF Goal 5: Growth and city form support improved livability in existing and future neighborhoods.
- •GCF P9: Allow higher-density and mixed uses in portions of, or adjacent to, single-family residential areas to encourage shopping, services and entertainment amenities in close proximity to housing and where appropriate.
- •GCF P14: Establish appropriate buffers and transitions (land use, form and/or landscaping) between residential neighborhoods and surrounding higher-density development.
- •H Goal 2: A variety of housing types (single-family detached, single-family attached, multifamily, as well as ownership and rental opportunities) is available at a variety of price and rent levels.
- •Housing Policy 18: Encourage housing to be built with, near or adjacent to retail uses.
- **6. Size of Tract:** The subject property is 15.266 acres, which can reasonably accommodate the proposed residential development.
- 7. Other Factors: The applicant intends to rezone to "MF-33" to develop multi-family apartments with a density of 33 units per acre. At 15.266 acres, this would allow a maximum of approximately 503 units on this property. The proposed project will consist of seven apartment building units with associated parking areas.

The subject property is located within the Camp Bullis Awareness Zone/Military Influence Area. In accordance with the signed Memorandum of Understanding, JBSA was notified of the proposed request. The Military has indicated that there are no objections to this request.

Based on the information provided to SAWS staff, SAWS identifies the subject property as a Category 2 property. SAWS staff recommends approval of the zoning request, provided that the impervious cover shall not exceed 50% on the approximately 15.266-acre portion of the site in the Edwards Aquifer Recharge Zone. Reference SAWS report dated September 24, 2024.

The proposed rezoning is seeking additional density for use as residential dwelling units. A rezoning application does not allow Short Term Rentals (STRs) as a use by right. Any applicant seeking to operate an STR must follow the appropriate City and Unified Development Code (UDC) processes and is required to apply and qualify for STR permit(s) through those processes. Short Term Rentals are governed by the UDC Section 16.1100. Also see Section 35-374.01 for STR density limitations, Section 35-399 for establishment regulations, and Section 35-482 for procedures regarding consideration of special exceptions.



SAN ANTONIO WATER SYSTEM Interdepartment Correspondence Sheet

To:

Zoning Commission Members

From:

Scott R. Halty, Director, Resource Protection & Compliance Department,

San Antonio Water System

Copies To:

Andrew Wiatrek, Manager, Edwards Aquifer and Watershed Protection Division, Michael

Barr, Supervisor, Aquifer Protection and Evaluation Section, Michael A. Escalante,

Environmental Protection Specialist III

Subject:

Zoning Case Z2024-10700119 (Bulverde Rd. MF-33)

Date: September 24, 2024

SUMMARY

A request for a change in zoning has been made for an approximate 15.266-acre tract located on the city's north side. A change in zoning from "C-2 MLOD-1 MNA ERZD GC-3" to "MF-33 MLOD-1 MNA ERZD GC-3" is being requested by the applicant, Japhet Holdings, Ltd, and represented by Patrick W. Christensen, Attorney at Law. The change in zoning has been requested to allow for a multi-family development. The property is currently classified as a Category 2.

Based on the site evaluation of the property, and the information submitted by the applicant, SAWS staff recommends **approval** of the proposed land use. Should the City Council rezone the property that is the subject of this report, the San Antonio Water System recommends that any development on that property after the zoning classification has been changed should be restricted as stated in the environmental recommendations section of this report.

LOCATION

The subject property is in City Council District 9, approximately 560-feet east of Bulverde Rd. and US Hwy. 281 North intersection. The property lies within the Edwards Aquifer Recharge Zone (Figures 1 and 2).

SITE EVALUATION

1. Development Description:

The proposed change is from "C-2 MLOD-1 MNA ERZD GC-3" to "MF-33 MLOD-1 MNA ERZD GC-3" and will allow for a multi-family development on 15.266-acre tract. Currently, the site is undeveloped with native trees. The proposed project will consist of seven apartment building units with associated parking areas.

2. Surrounding Land Uses:

Undeveloped commercial property bounds north and west of the site. Trinity Park Rd. and Trinity Oaks subdivision lies towards the east. Bulverde Rd. borders along the southern boundary.

3. Water Pollution Abatement Plan:

As of the date of this report, a WPAP has not been submitted to the Texas Commission on Environmental Quality (TCEQ). A WPAP will be required to be submitted to and approved by the TCEQ prior to commencement of construction.

4. Geologic Conditions:

The San Antonio Water Systems Aquifer Protection Section conducted a site evaluation to assess the geological conditions and to determine if environmental concerns are present. Mr. Justin Turknett, a Professional Geoscientist (P.G.) and a San Antonio Water System geologist, performed a site visit on May 23 and 24, 2024.

The site is "triangular" shaped and approximately 15.266 acres. The site is bounded by Bulverde Road to the south, Trinity Park Road to the east, and undeveloped land to the north. The site is undeveloped with thick vegetation. Along the southern boundary of the site, Elm Waterhole Creek runs parallel with Bulverde Road. Limestone bedrock is present with little to no soil cover throughout the site. The site gently slopes to the south.

According to the Federal Emergency Management Agency (FEMA) Flood Map 48029C0130G dated September 29, 2010, and Letter of Map Revision (LOMR) 17-06-3197P effective February 9, 2018, the site is not mapped within the 100-year floodplain.

According to the United States Geological Survey (USGS) Geologic Framework and Hydrostratigraphy of the Edwards and Trinity Aquifers Within Northern Bexar and Comal Counties, Texas, the site is mapped on the Dolomitic Member of the Kainer Formation associated with the Edwards Group.

The Dolomitic Member is approximately 110 to 130 feet thick. The lithology consists of mudstone to grainstone, crystalline limestone, chert. The Dolomitic Member is characterized by massively bedded light gray and abundant *Tuocasia* fossils. The cavern development is related to structure or bedding planes typically lateral. The dolomitic member is generally porous and relatively permeable.

During the site evaluation, a Geological Assessment dated January 26, 2024, was reviewed. The Geological Assessment identified seven features. Three of the identified features were documented as sensitive.

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The non-sensitive features consist of two small solution enlarge fractures approximately 6 to 7 feet long by 1 foot wide by 2 feet in depth, one solution cavity approximately 3 feet long by 2 feet wide by 1 foot in depth, and one fractured outcrop approximately 90 feet long by 50 feet wide.

The three sensitive features are discussed below:

- A zone of solution cavities and sinkholes were documented on the northeast corner of the site. The zone consists of four sinkholes with solutions cavities. The sinkholes are approximately 5 to 7 feet in diameter and approximately 3 feet in depth.
- A cave was documented in the central portion of the property. The mouth of the cave is approximately 10 feet long by 4 feet wide by 10 feet in depth. The cave width is approximately 2 to 3 feet in diameter. At the base of the cave, there is a void on the northern side that measures horizontally approximately 6 feet.
- A solution enlarge fracture is present in the central portion of the site. The solution enlarged fracture is approximately 6 feet long by 2 feet wide by 5 feet in depth. The majority of the fracture is filled in with clay.

During the site visits on May 23 and 24, 2024, a San Antonio Water Systems Geologist observed the seven features noted in the Geological Assessment. The San Antonio Water Systems geologist concurred with the Geological Assessment and appropriate buffers are required around the sensitive features in accordance with Ordinance No. 81491 Section 34-920.

ENVIRONMENTAL CONCERNS

The environmental concerns associated with this development being constructed on the Edwards Aquifer Recharge Zone are:

Site Specific Concerns

- 1. A zone of solution cavities and sinkholes located near the northeast corner of the site, has the potential for contamination of the Edwards Aquifer.
- 2. A cave located near the central portion of the site, has the potential for contamination of the Edwards Aquifer.
- 3. A solution enlarge fracture near the central portion of the site, has the potential for contamination of the Edwards Aquifer.

General Concerns

- 1. The improper use of pesticides, herbicides, or fertilizers needed for landscape maintenance that may be carried off in the first flush of stormwater run-off.
- 2. The build-up of hydrocarbons and other pollutants on streets, parking lots and other paved areas that are then carried off in the first flush of stormwater run-off.

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ENVIRONMENTAL RECOMMENDATIONS

The following recommendations address the environmental concerns raised by the construction of this development on the Edwards Aquifer Recharge Zone:

Site Specific Recommendations

- 1. The impervious cover shall not exceed 50% on the overall 15.266-acre site.
- 2. A natural buffer shall be provided as required in Ordinance No. 81491, Section 34-920, for the following preserved sensitive geologic features: zone of solution cavities and sinkholes; cave; solution enlarge fracture. A buffer area will be placed surrounding the sensitive geologic feature and shall be maintained in a natural condition. The width of the buffer area shall be based on the outer perimeter of the feature, extending outward from 60 feet to 100 feet. The buffer area perimeter will require fencing to prevent access to the feature openings.
- 3. The land uses within the project site shall be in conformance with the table of permitted uses at the time the re-zoning is approved. Should a proposed use be listed as requiring City Council approval, the owner/operator shall apply for re-zoning for that particular use at the project site. If the land use is listed as special use, a special permit must be obtained for that use. If the land use is listed as not allowed, that land use will not be permitted on the project site.
- 4. The owner of all water pollution abatement structures shall ensure these structures are properly maintained and kept free of trash and debris. A signed water quality maintenance plan must be submitted to the Aquifer Protection & Evaluation Section of SAWS. If at any time the ownership of the property changes, the seller must disclose to the buyer all the requirements of the water quality maintenance plan. The new owner must submit a signed water quality maintenance plan to the Aquifer Protection & Evaluation Section of SAWS.
- 5. Landscaped areas shall be sensitive to minimizing water needs, i.e., use of native plants. Each purchaser of an individual lot or tenant within this development shall be informed by the seller or lessor in writing about Best Management Practices (BMP) for pesticide and fertilizer application. Preventing Groundwater Pollution, A Practical Guide to Pest Control, available from the Edwards Aquifer Authority (210) 222-2204, or equivalent information produced by the U.S. Natural Resource Conservation Service, Texas Department of Agriculture, U.S. Department of Agriculture, shall be used.
- 6. The applicant shall notify the Construction Monitoring of SAWS at (210) 233-3565 no later than 48 hours prior to the commencement of construction at the site. If any significant geologic features such as, but not limited to, solution openings, caves, sinkholes, or wells are found during the excavation, construction, or blasting, the developer shall notify the Texas Commission on Environmental Quality and the Aquifer Protection & Evaluation Section of SAWS at (210) 233-3522.

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General Recommendations

- 1. Prior to the release of any building permits the owner/operator of any Category 2 property shall submit an Aquifer Protection Plan to the Resource Protection Division of the San Antonio Water System.
- 2. The City of San Antonio shall inspect all future construction of the sewage collection system to include service laterals and sewer mains for proper construction according to State and City Regulations and Code.
- 3. Prior to the release of any building permits, the following shall be submitted to the SAWS Aquifer Protection & Evaluation Section of the Resource Protection Division:
 - A. A copy of the Water Pollution Abatement Plan shall be submitted for the development within the area being considered for re-zoning,
 - B. A set of site-specific plans which must have a signed Engineers Seal from the State of Texas,
 - C. A WPAP approval letter from the Texas Commission on Environmental Quality,
 - D. A copy of the approved Water Pollution Abatement Plan.
- 4. The Resource Protection & Compliance Division staff shall have the authority to inspect the site to ensure that the approved recommendations are being strictly adhered to during and after construction of the project.

Based on the site evaluation of the property, and the information submitted by the applicant, staff recommends **approval** of the proposed land use. Additionally, SAWS staff recommends that the applicant, or any future owner, comply with the above recommendations in regards to the development of the subject property.

APPROVED:

Andrew Wiatrek

Manager

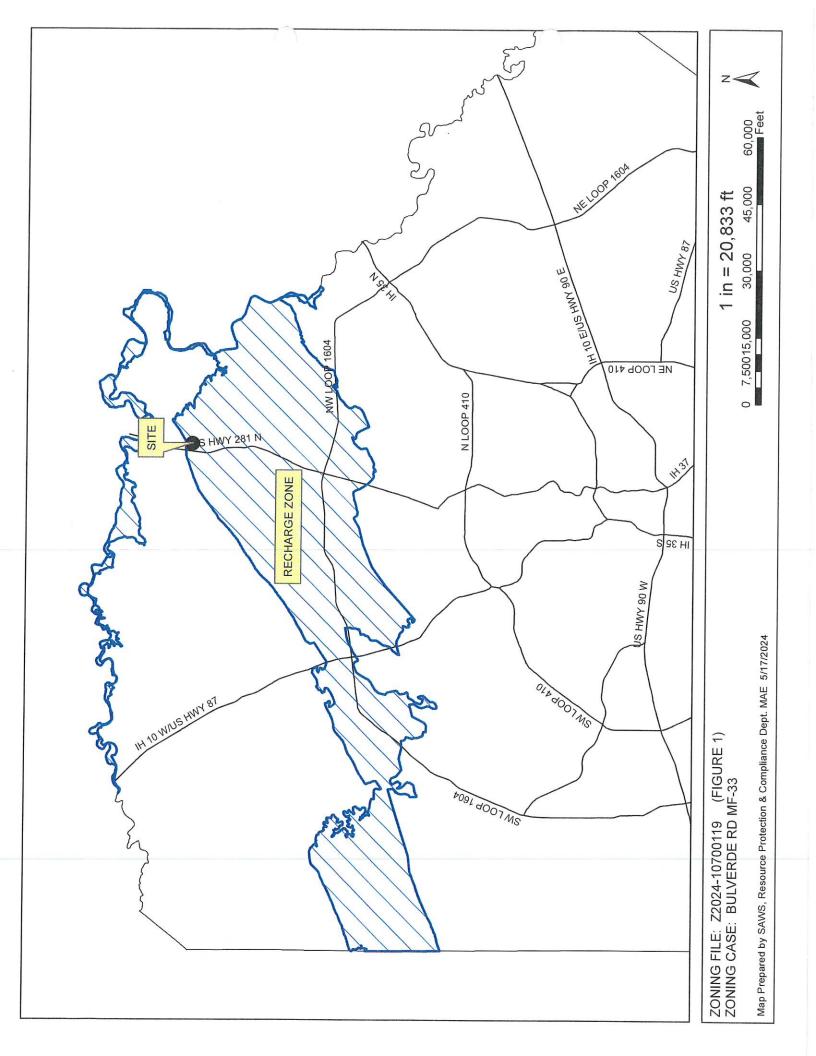
Edwards Aquifer and Watershed Protection Division

Scott R. Halty

Director

Resource Protection & Compliance Department

MJB:MAE







DEPARTMENT OF THE AIR FORCE 502D AIR BASE WING JOINT BASE SAN ANTONIO



4 June 2024

MEMORANDUM FOR CITY OF SAN ANTONIO

FROM: 502 ABW/CMI

JBSA Installation Mission Sustainment
2080 Wilson Way

Fort Sam Houston, TX 78234

SUBJECT: Joint Base San Antonio review of Zoning Case Z-2024-10700119 ERZD

- 1. Zoning Case Z-2024-10700119 ERZD has been reviewed by JBSA-CB organizations. JBSA does not object with this request; however, there are additional comments for consideration in planning and development.
 - a. Subject property is within City of San Antonio Camp Bullis Military Lighting Overlay District (MLOD) and will be required to comply with MLOD lighting standards at: https://library.municode.com/tx/san_antonio/codes/unified_development_code?nodeId=ARTII <a href="https://library.municode.com/tx/san_antonio/codes/unified_development_code?nodeId=ARTII <a href="https://library.municode.com/tx/san_antonio/codes/unified_devel
 - b. To mitigate potential interference with existing JBSA operational systems, please coordinate with 502 CS Spectrum Manager prior to use of any Spectrum dependent systems (i.e.: two-way radio communications, or any type of wireless technologies) during construction. If applicable, coordination requested by facility user prior to installation/use of any Spectrum dependent commercial or manufacturing equipment.
 - c. Any proposed exterior construction plans, construction or alteration projects which include vertical elements (equipment: cranes, towers: communication or water) may require FAA review to verify no hazard to flight navigation prior to issuance of any construction permits.

FAA CFR Title 14 Part 77 Notice Criteria Tool that can be utilized to aid in FAA notification requirements can be found here: https://oeaaa.faa.gov/oeaaa/external/gisTools/gisAction.jsp?action=showNoNoticeRequiredToolForm

Further FAA guidance is also available here: https://www.faa.gov/documentLibrary/media/Form/FAA Form 7460-1 042023.pdf

2. Point of contact for this action is Sean R. Greszler, AICP, 502 ABW/CMI. He can be reached at 210-808-7549 or by email at sean.greszler.1@us.af.mil or through the 502d ABW Community Initiative organization email box at 502ABW.ABW.Community initiative@us.af.mil

JOHN H. ANDERSON, GS-14, USAF Executive Director, Community and Mission Integration, JBSA & 502 ABW