



Travis County Commissioners Court Agenda Request

Meeting Date: January 10, 2012

Prepared By: Steven Manilla **Phone #:** 854-9383

Division Director/Manager:

A handwritten signature in black ink, appearing to read "Steven Manilla", written over the text "Division Director/Manager:".

Department Head: Steven M. Manilla, P.E., County Executive-TNR

Sponsoring Court Member: Commissioner Davis, Precinct One

AGENDA LANGUAGE: Approve setting a public hearing on Tuesday, January 31, 2012 to receive public comments and take appropriate action regarding the proposed Development Agreement with TXI and the City of Austin regarding Greenprint land along Gilleland Creek and the Colorado River in Precinct One.

BACKGROUND/SUMMARY OF REQUEST:

In 2005, the City of Austin, the Trust for Public Land, the U.T. School of Architecture, and Travis County produced the Travis County Greenprint for Growth to identify land that is a high priority for public acquisition as open space. High priority lands are regarded as land located along rivers and streams to include the floodplains of these bodies of water. After the 2005 Bond Election, the county developed a strategy for acquiring open space within eastern Travis County and priority was given to Onion Creek in southeast Travis County and Gilleland Creek in northeast Travis County because they were both within the City of Austin's desired development zone and were located in rapidly urbanizing watersheds. The strategy was to link existing municipal, county, and state parks along these creeks with a greenway corridor by purchasing land in the floodplain ranked as moderate to high priority by the Greenprint. The county's goal was to complete segments that have logical termini and are accessible and improved so that the public can use them even if no subsequent bond funds were authorized by the voters. Travis County began acquiring open space in 2007 along Onion Creek. Meanwhile, TXI was purchasing some of the same parcels along the Colorado River and Gilleland Creek that were identified by the Greenprint as priority parcels. Research shows they own approximately 40% of the high to medium priority rated land identified by the Greenprint because there are sand and gravel deposits beneath much of the conservation land valuable to TXI. Neighborhoods adamantly opposed to the mining and expressed concerns about truck traffic, dust, noise, water pollution, and property devaluation were just some of the concerns expressed during public hearings. Despite the protest of area residents, the city and county were legally required to grant TXI with a development permit in 2008 for the mining since they had complied with all city and county regulations. Subsequently, the county started negotiating with TXI and from these discussions and input from stakeholders from the public meeting

held on December 1, 2011 evolved a proposal that would result in county acquisition of Greenprint land and also remove TXI's truck traffic from public roads and the creation of buffers to protect neighborhoods from dust and noise. On December 13, 2011, the Commissioners Court determined the proposal was worthy of further consideration and believed the best vehicle for implementing the proposal would be a development agreement among TXI, the City of Austin, and Travis County and further recommended to set a public hearing for the Court on January 31, 2012.

STAFF RECOMMENDATIONS:

Staff recommends the approval for setting a public hearing on January 31, 2012.

ISSUES AND OPPORTUNITIES:

FISCAL IMPACT AND SOURCE OF FUNDING:

ATTACHMENTS/EXHIBITS:

REQUIRED AUTHORIZATIONS:

Cynthia McDonald	Financial Manager	TNR	854-4239
Steve Manilla	County Executive	TNR	854-9429

CC:

: :
0101 - Administrative -

**PROPOSED OPEN SPACE ACQUISITION AND DEVELOPMENT AGREEMENT
AMONG TRAVIS COUNTY, TXI, AND THE CITY OF AUSTIN:
BACKGROUND AND EXPLANATION
DECEMBER 1, 2011**

PREFACE

The Travis County Commissioners Court has scheduled a public meeting on Thursday, December 1, 2011 at 6:00 PM at its East Service Center, 6011 Blue Bluff Road to explain and receive public comments on a proposed agreement between the County and TXI for open space acquisition and TXI's development of its Hornsby Bend East and West mining sites. The following paper provides a summary of the topic. County staff will make a brief summary slide presentation of the agreement at the public meeting

BACKGROUND

2005 Travis County Open Space Bonds

In 2005, the voters of Travis County approved the issuance of park bonds, including \$6.4 million for open space parkland acquisition throughout the county. While legally available to all areas of Travis County, it was generally understood that the funds would be used in eastern Travis County. Another \$8.6 million was authorized for open space parkland along Onion Creek. The parkland open space is purchased over a period of years as the county's debt capacity allows.

The Travis County Greenprint for Acquiring Open Space

Also in 2005, the County in cooperation with the Trust for Public Lands developed the Travis County Greenprint Model, which identified and rated the priority of land parcels throughout the county for conservation (See attached Exhibit "A").

Generally, high priority lands are located along rivers and streams and include the floodplains of these water bodies. After the 2005 bond election, the County developed a strategy for acquiring open space within eastern Travis County. Priority was given to Onion Creek in southeast Travis County and Gilleland Creek in northeast Travis County because both were within the City of Austin's desired development zone and were in rapidly urbanizing watersheds, spurred in part by the construction of State Highway 130.

The County's strategy is to link existing municipal, county, and state parks along these creeks with a greenway corridor by purchasing land in the floodplain ranked as moderate to high priority by the Greenprint. The amount of the park bonds is limited, so the County can buy only a finite amount of acreage. The County's goal is to complete "minimum viable segments" of greenway; that is, complete segments

that have logical termini and are accessible and improved so that the public can use them even if no subsequent bond funds are authorized by the voters.

The first “minimum viable segment” of the Onion Creek greenway starts at its confluence with the Colorado River and ends upstream at FM 973. The first “minimum viable segment” of Gilleland Creek starts at its confluence with the Colorado River and ends upstream at FM 969. The County began acquiring open space in 2007 along Onion Creek, generally paying between \$3,500 and \$4,500 per acre for the flood plain from willing sellers. The County planned to acquire open space along Gilleland Creek in the latter years of 2005 bond program.

Mining Companies Own Many Tracts In The Greenprint And Are Buying More.

Meanwhile, unknown to Travis County, TXI was contracting to purchase some of the same parcels along the Colorado River and Gilleland Creek identified by the Greenprint as priority open space. Research shows that TXI, Capitol Aggregates, Shumaker, Cemex, and other mining companies own about 40% of the land rated by the Greenprint as high to medium priority along the Colorado River from Austin to the Travis-Bastrop County line (see attached Exhibit “B”). Clearly, the County’s objective of conserving open space is in direct competition with mining because there are sand and gravel deposits beneath much priority conservation land.

On October 22, 2008 TXI submitted to Travis County its application to mine two sites, Hornsby Bend East and Hornsby Bend West, along the Colorado River and its confluence with Gilleland Creek. The application confirmed that the County would be competing with TXI for acquisition of some parcels, and that TXI could afford to pay a premium for the land because of the value of the sand and gravel beneath the surface.

TXI Obtains Permits For The Hornsby Bend East And West Sites.

Neighbors were adamantly opposed to the mining and expressed concerns about truck traffic, dust, noise, water pollution, and property devaluation, among many concerns. However, TXI complied with all the County’s and City’s development regulations. Over the protest of area residents, but as required by Texas law, the County and City granted TXI development permits for the mining.

However, because TXI proposed to haul its mined materials over public roads to its existing processing plant at its Webberville tract, as a condition of the permit Travis County required TXI to make the following road improvements before any raw materials are mined TXI: 1) reconstruct a total of 9,8000 feet of Dunlap Road; 2) install a turn-lane and traffic signal at FM 969; 3) improve the intersections of FM 969 and Taylor Lane and FM 969 and Burleson Manor Road.

Also, TXI is required by state law to provide a 50-foot buffer between its mining cells and adjoining properties. TXI voluntarily provided additional 58 acres of buffer along Hunters Bend Road across from the Chaparral Crossing subdivision.

The Rison Tract

Notwithstanding its separate process for permitting TXI's mining, the County began negotiating with the owners of 587 acres of the Rison tract, which is a portion of TXI's Hornsby Bend East site. The owners had granted TXI the option to purchase the tract, but allowed the County to survey and appraise it. Meanwhile, TXI exercised its purchase options and became owner of the tract, now permitted for mining. The County's outside appraiser valued the tract at \$6,170,000, or about \$10,511 per acre.

At that point, both the County and TXI agreed to discuss each other's objectives and see if there was common ground that could lead to agreement on terms for open space acquisition and mining, as well as for addressing some of the concerns of area residents about mining operations.

POSSIBLE ALTERNATIVES

The County has three basic alternatives at this point.

1. Do nothing. Under this alternative, TXI mines all its Hornsby Bend East and West sites, including the Rison Tract, under its existing permit and hauls its materials on public roads, unless it obtains a City variance to amend its permits to cross Gilleland and Elm creeks with an internal haul road. No buffers are established between the mining and any adjacent neighborhoods.
2. Try to buy the Rison tract from TXI. This would almost certainly require the County to file suit to condemn the land. TXI will hire its own appraisers and lawyers to argue for a price, including remainder damages, much higher than the \$6,170,000 in the County's appraisal. TXI would still mine the remainder of its Hornsby Bend East and West sites under its existing permit and haul its materials on public roads. Only one neighborhood would be buffered from mining by County purchase of the Rison Tract. Not only could condemnation exhaust the 2005 open space bonds, but TXI can use the money the County pays for the Rison Tract to buy more nearby land for mining, including other high priority Greenprint land.
3. Pursue an Open Space Acquisition and Development Agreement with TXI and the City of Austin, amending and supplementing TXI's current permit and agreements and providing for a more comprehensive set of measures and considerations, such as open space acquisition and donations, more buffers for more neighborhoods, phasing of the mining, and removing trucks from public roads and other restrictions.

POTENTIAL AGREEMENT IN CONCEPT

A year of discussion and negotiations between the County and TXI have produced the following major terms for a potential agreement (cross referenced in attached Exhibit "C"):

- A.** Travis County purchases 178.6 acres of open space parkland from TXI (Portion of Rison Tract in Hornsby Bend East site) to create 1000' buffer between the Twin Creek Meadows subdivision and TXI's Hornsby Bend East site.
- B.** Travis County purchases 17.4 acres of right of way from TXI (portion of Webberville site) for future extension of Burleson-Manor arterial roadway and its crossing of the Colorado River.
- C.** TXI donates to Travis County 181.9 acres of land along Gilleland Creek and the Colorado River for open space parkland.
- D.** Travis County and City of Austin agree to standards for permitting additional mining on TXI's existing Webberville site to offset the loss of sand and gravel materials purchased by the County in "A" above.
- E.** TXI agrees not to mine within 1000' of most of the existing residential areas of Austin Colony and Twin Creek Meadows, and within 1000' north and south of Chaparral Crossing. TXI further agrees to expedite the mining of 1000' east of the Chaparral subdivision as its first phase of mining and to expedite the mining within 1000' north of Milo Road once mining begins in that area.
- F.** TXI agrees not to use Hunters Bend Road, Dunlap Road, Milo Road, and FM 969 to haul raw materials from its Hornsby Bend East and West sites to its processing plant on its Webberville site.
- G.** Travis County and City of Austin agree to standards for permitting, and TXI agrees to construct, a gravel haul road from its Hornsby Bend East/West sites, two concrete-fortified crossings at locations across Elm Creek and Dunlap Road, and a concrete span bridge across Gilleland Creek to its existing processing plant on its Webberville site.
- H.** TXI agrees to construct a berm along the eastern side of Dunlap Road and along the north side of Milo Road.
- I.** TXI agrees not to mine (but not to convey) 114 foot wide strip of its land along the western boundary of its Hornsby Bend West site for future right of way of a planned collector street.
- J.** TXI agrees to fence private cemetery east of Dunlap Road

Future Opportunities For Public Input

To pursue an Open Space Acquisition and Development Agreement, the County would consider it at one or more public meetings or hearings before the Commissioners Court. Also, the County would need to ask the City of Austin to become a party to the agreement because it has the sole authority to grant a variance to its water quality regulations allowing TXI to cross Gilleland Creek and

Elm Creek with its haul road (“G” above). There would be additional opportunities for public input as part of the City process.

Regulatory Considerations

Under the potential agreement with the County and City, TXI will haul its raw materials along an internal haul road that crossings Gilleland Creek. This will require new permits or revisions to the existing permits from Travis County; new or revised, the county’s review and approval process would be the same. In order for the County to grant these permits or revisions, TXI would have to obtain permits or exemptions from permits from the U.S. Army Corps of Engineers. TXI would also need a Conditional Letter of Map Revision (CLOMR) from FEMA showing no adverse impact from flood on properties they do not own or otherwise control. Built into the CLOMR process is a requirement that the project be reviewed and approved by U.S. Fish and Wildlife. Because the project is in the Extra Territorial Jurisdiction (ETJ) of the City of Austin, a permit from the City is also required. Under Austin's water quality rules, a creek crossing for these purposes would require a variance for encroachment into the Critical Water Quality zones.

A comparison of the three alternatives follows:

	<u>DO NOTHING</u>	<u>RISON CONDEMNATION</u>	<u>POTENTIAL AGREEMENT</u>
HOUSEHOLDS DIRECTLY BUFFERED	100	106	361
PARKLAND OPEN SPACE ACQUIRED	NONE	587 Acres	360 Acres
RIGHT OF WAY ACQUIRED	NONE	NONE	17.8 Acres
COST TO COUNTY			
OPEN SPACE PARKLAND	\$0	\$6,170,000+	\$2,089,620
RIGHT OF WAY	\$0	0	\$200,000
TOTAL	\$0	\$6,170,000+	\$2,289,620
2005 BOND FUNDS AVAILABLE FOR			
ADDITIONAL OPEN SPACE ACQUISITION	\$6,047,194	NONE	\$3,957,574
HAUL TRUCKS ON COUNTY ROADS	YES	YES	NO
RIGHT OF WAY PRESERVED FOR			
BLAKE MANOR ARTERIAL	NONE	NONE	17.8 Acres
AUSTIN COLONY FUTURE COLLECTOR	NONE	NONE	114 Feet
50' BUFFER ALONG DUNLAP & MILO	YES	YES	YES
EXPEDITED MINING OF SELECTED AREAS	NONE	NONE	CHAPPAREL CROSSING MILO ROAD
CROSSING OF GILLELAND CREEK	NO	NO	YES
CROSSING OF ELM CREEK	YES	YES	YES

MULTIPLE-PRONG APPROACH TO AREA DEVELOPMENT

Travis County has responded in multiple ways to the community's concern about TXI's mining permit and other concerns about development in the corridor.

ENVIRONMENTAL MONITORING

The environmental monitoring is designed to determine pre-mining baseline environmental conditions prior to the onset of mining activities by TXI at their "Hornsby Bend" mine sites. Under a one-year contract with Travis County, URS Corporation is engaged in three tasks to determine baseline:

- 1) Groundwater quality and elevation conditions up-gradient and down-gradient from the mine site;
- 2) Upwind and downwind levels of suspended particulate matter in the PM 2.5 and PM 10 size fractions in the air; and
- 3) Noise levels in areas between existing and future mining activities and nearby receptors.

The contract runs from July 2011 through July, 2012. Initially, URS completed site reconnaissance, developed a sampling and analysis plan, completed a well inventory, and conducted a door-to-door survey of prospective wells to monitor and sites to place air and noise monitoring equipment.

As of November 17, 2011, wells for monitoring have been selected, arrangements were made with property owners to allow access for monitoring, the first of four air monitoring events occurred, the first of two noise monitoring events occurred, and the first of six groundwater sampling events has taken place. Additionally, one well has a transducer installed to allow for continuous water elevation measurements. All baseline monitoring events are scheduled for completion by May, 2012. A public meeting on the first year results will be convened by the end of the contract period. The Commissioners Court will consider funding for additional monitoring in subsequent years when it adopts the county operating budget each year.

COLORADO RIVER CORRIDOR PLAN

The Colorado River Corridor Plan (Corridor Plan) is a joint planning initiative of Travis County, the City of Austin, with technical assistance from the Lower Colorado River Authority (LCRA). The area of interest covers over 30,000 acres in eastern Travis County, bounded by US 183 on the west, east to the Travis County line with Bastrop County, and by FM 969 on the north to State Highway 71 on the south. The purpose of the Corridor Plan is to coordinate regional and local planning to facilitate the preservation and enhancement of the many valuable environmental, economic, recreational, and cultural resources of this region over the next twenty-five years. The plan outlines objectives for improved protection of local bio-diversity, preservation and restoration of floodplains and natural areas; the creation of parks,

completion schedule. The design and construction will adhere to federal policies and procedures for environmental clearances and right-of-way acquisition which can require one or more years to complete.

DETAILS OF TXI PERMITS

As stated earlier, the County granted TXI two Flood Hazard Area Development Permits on January 29, 2010 for TXI's Hornsby Bend East and West mining sites. These permits were administratively renewed on June 2, 2011. The term of these renewed permits is five years, as provided under Travis County Chapter 64 regulations. Because TXI proposed to haul its mined materials over public roads to its existing processing plant at its Webberville tract, Travis County required TXI to adopt a separate Roadway Improvement Agreement for improvements to Dunlap Road and certain intersections on FM 969 to accommodate the increased truck traffic from their operations. Under its current permits, TXI will have to complete the roadway improvements before hauling any mined materials from the sites to its processing plant at its Webberville site.

EXHIBITS

- A Travis County Greenprint Model for eastern Travis County
- B Location of Mining Properties in Colorado River corridor
- C Map of Proposed Open Space Acquisition and Development Agreement

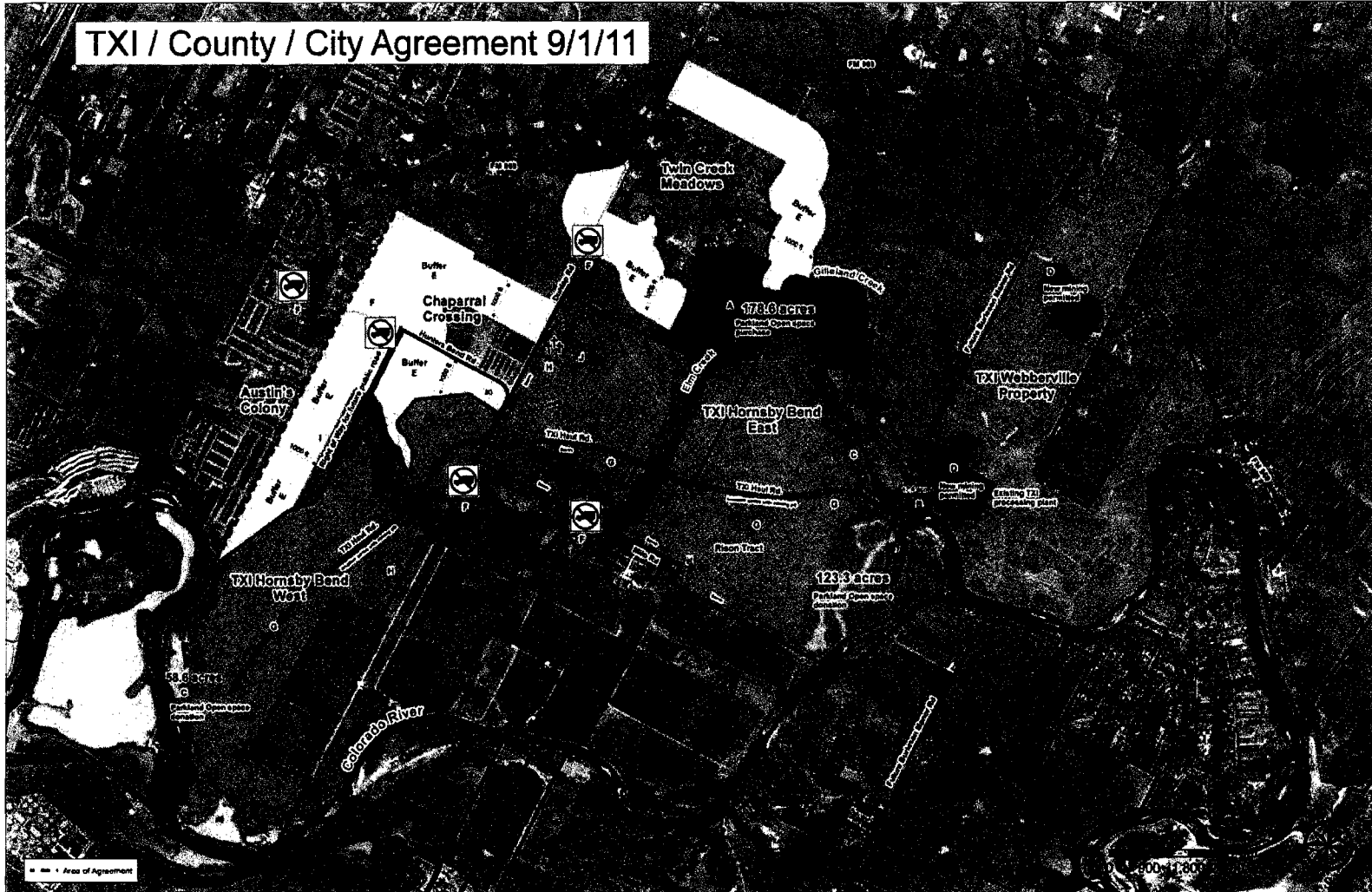


EXHIBIT C



TRANSPORTATION AND NATURAL RESOURCES DEPARTMENT

STEVEN M. MANILLA, P.E., COUNTY EXECUTIVE – TNR/FMD

411 W. 13th St.
Eleventh Floor
P.O. Box 1748
Austin, Texas 78767
(512) 854-9383
FAX (512) 854-4626

December 21, 2011

Mr. Marc Ott
City Manager, City of Austin
P.O. Box 1088
Austin, Texas

RE: Possible Development Agreement For Land Along Gilleland Creek and the Colorado River.

Dear Mr. Ott:

In 2005, the City of Austin, Travis County, the Trust for Public Land, and the U.T. School of Architecture produced the *Travis County Greenprint for Growth* to identify land that is a high priority for public acquisition as open space. The County then developed a strategy to acquire *Greenprint* lands along Onion and Gilleland creeks to create a trail linking existing City, County, and State parks.

The County was negotiating the purchase of *Greenprint* land at the confluence of Gilleland Creek and the Colorado River in 2008 when TXI applied to the City and County for permits to mine land that it owned or was acquiring there. Citing concerns such as increased truck traffic on public roads and dust and noise from mining operations, neighbors opposed the mining. As required by law, the City and County issued the permits because TXI complied with City and County regulations.

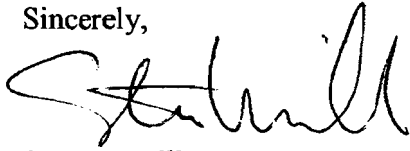
The permits covered land that TXI bought from some of the owners the County had been negotiating with, so the County started negotiations anew with TXI. From these discussions has evolved a proposal that would result not only in County acquisition of *Greenprint* land, but also removal of TXI's truck traffic from public roads and creation of buffers to protect neighborhoods from dust and noise.

The County has taken input from stakeholders, including holding a public meeting with them on December 1st. On December 13th, the Commissioners Court determined the proposal is worthy of further consideration and set a public hearing for the Court's January 31, 2012, meeting.

The Court believes that the best vehicle for implementing the proposal would be a development agreement among TXI, the County, and the City because certain City and County regulatory matters would need to be addressed in addition to the County real estate matters. Accordingly, the Court directed me to formally request City management to discuss the proposal

with us. Former County Executive Joe Gieselman was handling this matter before his recent retirement and the Court has retained him to continue that work, so he will be the lead County contact. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Manilla". The signature is fluid and cursive, with the first name "Steve" being more prominent than the last name "Manilla".

Steve Manilla
County Executive
Transportation, Natural Resources, and Facilities

cc: Travis County Commissioners Court
Austin City Council
Assistant City Manager Sue Edwards
Greg Guernsey, Director, Planning and Development Review
Jean Drew, Watershed Protection
Barry Bone, TXI