

AN ORDINANCE 7 1729

ADOPTING AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE TO IMPLEMENT AN IMPACT FEE PROGRAM FOR SANITARY SEWER AND WATER FACILITIES, RESPECTIVELY, IN ACCORDANCE WITH CHAPTER 395 OF LOCAL GOVERNMENT CODE, VERNON'S TEXAS CODES ANNOTATED.

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WHEREAS, the City of San Antonio is authorized by Chapter 395 of the Local Government Code, Vernon's Texas Codes Annotated, (hereinafter referred to as the Local Government Code) to enact impact fees to finance capital improvements required by new development; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, on August 10, 1989, after a duly publicized public hearing, the City adopted a Land Use Assumptions document projecting levels of new development to occur within the City limits and extraterritorial jurisdiction over a ten year period from 1988 to 1998; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, on May 10, 1990, after a duly publicized public hearing, the City designated the service areas to be used to develop capital improvement plans for sanitary sewer and water facilities, respectively, and adopted an amendment to the Land Use Assumptions document clarifying certain forecasting assumptions; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, the City has prepared capital improvement plans and impact fee rate schedules for sanitary sewer and water facilities, respectively, to provide service to new development within designated service areas; and

WHEREAS, the Planning Commission on June 6, 1990, and June 13, 1990, by resolution recommended to the City Council that the capital improvement plans and impact fee rate schedules for water facilities and sanitary sewer facilities, respectively, be adopted; and

WHEREAS, implementation of an impact fee program requires amendment to certain provisions of the Unified Development Code of the City of San Antonio; and

WHEREAS, the Planning Commission on June 13, 1990, after holding a public hearing, recommended approval of proposed amendments to the Unified Development Code to implement impact fee programs for sanitary sewer and water facilities, respectively;

WHEREAS, in accordance with Chapter 395 of the Local Government Code, the City Council duly publicized and held a public hearing June 14, 1990, on the proposed capital improvement plans and impact fee rate schedules for sanitary sewer and water facilities; and

WHEREAS, immediately upon adoption of such capital improvements plan for water service facilities, the Council has directed staff to commence an action plan for updating the City's impact fee program; and

WHEREAS, the Council directed staff to commence such an action plan for numerous reasons including the following:

- the City of San Antonio has an opportunity to assess the cost of new development to those that benefit from it;
- the rate payers in San Antonio are struggling to meet costs to provide basic services to our city;
- responsible growth in San Antonio is more likely to occur when an accurate assessment of cost is identified and charged; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The amendments to the Unified Development Code given at Attachment I are hereby adopted and incorporated herein for all purposes.

SECTION 2. The provisions of this Ordinance shall be liberally construed to carry out its purposes of furthering public health, safety, welfare and convenience.

SECTION 3. All ordinances, Code sections, or parts thereof in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION 4. The accurate assessment of impact fees necessarily includes the cost of surface water attributable to new development. It is the City Council's intent to see the cost of Appplewhite attributable to new development included in future impact fee calculations.

SECTION 5. Council calls for further work by staff to develop new land use assumptions and update capital improvement plans so fees reflect all eligible costs. The staff is directed to establish a calendar to provide for a public hearing on land use assumptions on or about September 1990 and for a public hearing on Capital Improvement Plans and new fees on or about January 1991.

SECTION 6. Should any article, Section, Part, Paragraph, Sentence, Phrase, Clause or word of this Ordinance, for any reason, be held illegal, inoperative, or invalid, or if, any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall,

nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

PASSED AND APPROVED this 14th day of June, 1990.

Rita Cockrell

M A Y O R

ATTEST: *Norme S. Rodriguez*
City Clerk

APPROVED AS TO FORM: *Tom Jinday*
City Attorney

90-26

This amendment to the Unified Development Code adopts impact fees for water and sanitary sewer service in accordance with Vernon's Texas Codes Annotated, Local Government Code Chapter 395 (Senate Bill 336). It amends Articles II and IV and adds a new Article V.

1. ADD NEW SECTION 35-2052 TO DIVISION 1, ARTICLE II TO READ:

Sec. 35-2052. Impact fees.

(a) Impact fees for water and sanitary sewer capital facilities are established in Article V in accordance with the requirements of V.T.C.A., Local Government Code Chapter 395 which relates to the financing of capital improvements required by new development in political subdivisions. Chapter 395 specifically sets forth the process which political subdivisions must follow in order to impose legally authorized impact fees as a means to fund the costs of capital improvements necessitated by and attributable to new development. The city has followed that process in adopting Article V of this code.

(b) It is the policy of the city to implement impact fees in a manner which is consistent with, and complementary to, other city policy objectives such as advancing economic development, encouraging contiguous growth, and increasing the availability of affordable housing as demonstrated through the creation of the Housing Trust Fund (Ordinance No. 67895) and the Housing Master Plan Task Force (Ordinance No. 70728). Article V provides for lower impact fee rates for the inner part of the city which is consistent with the affordable housing and contiguous development policy objectives. This article also permits the City Council to authorize payment from the city's sewer enterprise fund for part or all of an assessed impact fee for a given development (determined on a case-by-case basis) when it deems full collection of the impact fee would be contrary to established economic development policy objectives (Resolution No. 89-07-12 and Ordinance No. 70915).

2. REVISE SECTION 35-4268 TO DELETE SUBSECTIONS (B), (C), (D) AND (E) AND TO RENUMBER EXISTING SUBSECTION (F) AS 35-4268(B); DELETE SECTIONS 35-4269 AND 35-4275.

3. REVISE SECTION 35-4273 TO READ:

Sec. 35-4273. Public property requirement.

Where due to any of the provisions of Section 35-4268 it is necessary to provide a treatment plant or lift station as a part of the sewer service to a development or any part thereof, all portions of such treatment facilities or lift stations including

access roads shall be on public property or within an easement or right-of-way secured by the developer and granted to the city for such purposes and evidenced by an appropriate written instrument suitable for filing with the County Clerk. However, it is expressly excluded from being the responsibility of the developer to provide any interest in land for off-site mains or facilities.

4. REVISE EXHIBIT A TO DELETE SECTION 35-A302.

5. REVISE EXHIBIT C TO DELETE SECTION 35-C202.

6. ADD NEW ARTICLE V TO READ:

ARTICLE V. IMPACT FEES

Division 1. General provisions

Sec. 35-5001. Authority.

This article is adopted pursuant to V.T.C.A., Local Government Code Chapter 395 and shall not limit the city's authority to impose additional impact fees or charges if such impact fees or charges are specifically authorized by state law and duly adopted by ordinance.

Sec. 35-5002. Effect on other parts of this code.

This article shall not limit the permissible use of property, density of development, design and improvement standards and requirements, or any other aspect of the development of land or provision of capital improvements subject to the zoning, subdivision, and other regulations set forth in this code.

Sec. 35-5003. Additional requirement.

Impact fees are additional and supplemental to, and not in substitution of, any other requirements imposed by the city on the development of land or the issuance of building permits.

Sec. 35-5004. Water service.

Impact fees for water service are governed by Section 11 of the City Water Board's Regulations for Water Service which is adopted as a part of this article.

Division 2. Sanitary sewers.

Sec. 35-5010. Special impact fee definitions.

The following definitions apply only to this division.

Capital improvements - public facilities which have a life expectancy of three (3) or more years that are owned and operated by the city, and are treated as capitalized expenses according to generally accepted accounting principles. This definition does not include costs associated with the operation, administration, maintenance, or replacement of capital improvements.

Capital improvements plan - the plan that identifies existing and future sanitary sewer capital improvements or facility expansions within designated service areas for which impact fees may be assessed.

Developer - the owner of property, his/her subsequent purchasers, successors, and/or assigns.

Director - the Director of the Department of Wastewater Management or his/her designated representative.

Equivalent dwelling unit - the service unit used within this division equal to seven hundred fifty (750) gallons per day of peak wastewater flow and three hundred seventy-five (375) gallons per day of average wastewater flow.

Gross acreage - the total acreage of a development.

Impact fee - a charge or assessment imposed by the city against new development in order to generate revenue for funding the costs of capital improvements or facility expansions necessitated by and attributable to the new development as specified in the Sanitary Sewer Capital Improvements Plan for designated impact fee service areas. The term includes amortized charges, lump sum charges, capital recovery fees, contributions in aid of construction, and any other fee that functions as described by this definition.

Land use assumptions - description of changes in projected wastewater demand contained in the Land Use Assumptions Plan.

Net acreage - that portion of the gross acreage of a development which discharges sewage into the sanitary sewer system excluding those portions of a development dedicated to public use, such as streets, drainage and open space.

New development - the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of equivalent dwelling units.

Off-site facility - any structure, facility, equipment, or installation, the purpose and function of which is to receive wastewater from a development's internal collection system and to transport, treat, and ultimately discharge that wastewater to a receiving stream at a permanent location determined by the city.

On-site facility - any structure, facility, equipment or installation that collects and transports wastewater generated from within a development to the off-site system at a designated point.

Payment agreement - agreement between the city and a developer of a tract of land for which the plat has been recorded providing for the time and method of payment of impact fees in accordance with V.T.C.A., Local Government Code Section 395.018.

Planning area - the corporate limits and extraterritorial jurisdiction of the City of San Antonio.

Regional agent boundary - the geographical area established by Texas Water Quality Board Order No. 72-0120-1, dated January 20, 1972, as amended and as may be amended, within which the city is designated as the responsible governmental agency to construct, operate, and maintain sanitary sewer systems.

Reimbursement agreement - agreement between the city and a developer for the construction of sanitary sewer facilities as authorized by V.T.C.A., Local Government Code Sections 395.004(C) and 395.019(2). There are two categories for such agreements: those for facilities listed in the Capital Improvements Plan and those for facilities not listed.

Reserve capacity agreement - agreement between the city and a developer of a tract of land whereby impact fees may be collected and the five (5) year statutory service availability date waived in order to reserve future capacity in accordance with V.T.C.A., Local Government Code Section 395.019(3).

Service area - one of two areas in the planning area designated by the Capital Improvements Plan in which the city shall assess impact fees under the provisions of this article for the extension of sanitary sewer service. The two service areas are inside the regional agent boundary and outside the regional agent boundary, respectively.

Service unit - a standardized measure of consumption, use, generation, or discharge attributable to an individual unit of development and calculated in accordance with generally accepted engineering or planning standards for sanitary sewer capital improvements or facilities expansions. See definition for equivalent dwelling unit.

Vested capacity right - a vested right to the exclusive use of a specified amount of sewerage treatment and/or collection capacity

created by the payment of an impact fee in accordance with the provisions of this article or created by the payment of sewer platting fees under the articles and policies of the city for the extension of sanitary sewer service prior to the date of enactment of this article.

Watershed - the area drained by a given stream or river.

Sec. 35-5020. Service areas.

All provisions of this division, except where specifically otherwise provided, apply to the two impact fee service areas which are hereby established: inside the regional agent boundary (IRAB) and outside the regional agent boundary (ORAB). Exhibit E to this chapter indicates the geographic boundaries of these service areas.

Sec. 35-5021. Service outside the regional agent boundary.

(a) Fee components. The city shall provide sewer service to new development outside the regional agent boundary (ORAB) only under the terms of a sewer service contract executed between the developer and the city. An ORAB sewer service contract shall provide for the payment of a two-tiered impact fee as specified in Exhibit E by the developer as a condition of service. The first tier of the impact fee shall be a treatment component which shall be assessed on an equivalent dwelling unit (EDU) basis. The second tier of the impact fee shall be a collection component.

(b) Collection component. A developer shall satisfy the requirement for the collection component by paying the capital cost of designing, constructing, and oversizing, the off-site sanitary sewer line necessary to provide sewer service to his property, provided that such cost is at least equal to the dollar amount, based upon the rate schedule in Exhibit E, of otherwise having to pay the collection component of the impact fee for the number of EDUs his property will generate.

(1) Should the capital cost of designing, constructing, and oversizing the necessary off-site sewer line be less than the corresponding dollar amount of the collection component of the impact fee, then the developer shall pay the city the difference between the two amounts.

(2) Should the capital cost of designing, constructing, and oversizing the necessary off-site sewer line be greater than the corresponding dollar amount of the collection component of the impact fee, then, depending on the terms of the sewer service contract, the developer shall either be entitled to impact fee credits or shall be reimbursed for the excess costs by subsequent developers who connect to the off-site line at a rate per EDU not to exceed the maximum allowable fee per EDU for the ORAB collection component of the impact fee in effect at the time of plat approval.

(3) The city shall compare the developer's actual capital cost of designing, constructing, and oversizing the necessary off-site sewer line and the dollar amount of the collection component fee which the developer would otherwise have paid, upon completion and acceptance by the city of the off-site sewer line. Payment by the developer of any additional fees owed or, conversely, the issuance to the developer of any impact fee credits or reimbursements from other developers shall not occur until the actual costs of design and the as-built construction costs have been established and this comparison has been made.

Commentary: This section is intended to address the requirements of V.T.C.A., Local Government Code Sections 395.001(4)(C) and 395.019(2). Together these sections provide a mechanism for allowing a developer to construct needed capital improvements at his cost and then receiving reimbursement or impact fee credits for having constructed such facilities.

(c) Planning Commission designated sewer service area. The Planning Commission in its Resolution No. 80-05-01, dated May 7, 1980, recommended that certain territories located outside the regional agent boundary be considered as a "sewer service area" subject to the same terms and conditions as inside the regional agent boundary. Properties within that area, which is delineated on the map in Exhibit E, shall be eligible for sewer service as if they were physically located inside the regional agent boundary.

Sec. 35-5022. Service inside the regional agent boundary.

(a) City options. The city may provide sanitary sewer service to new development inside the regional agent boundary (IRAB) under the terms of Division 6, Article IV of this code upon the payment by a developer of a single-tiered impact fee in accordance with the rate schedule specified in Exhibit E. The city may also elect not to provide service under Article IV if the conditions set forth in Section 35-5031(e) are in effect. In such instances, a developer shall have the option of seeking service from the city under the terms of a sewer service contract.

(b) Fee differential. Within the IRAB service area, there is a distinction between impact fee rates assessed properties inside and outside the city limits of San Antonio. Different rates are set to further the city's annexation policies contained in Article II of this code.

Sec. 35-5023. Sewer service contracts.

(a) Types of contracts. Sewer service contracts include payment agreements, reimbursement agreements, and reserve capacity agreements. These contracts may be used for property located either inside or outside the regional agent boundary, unless specifically prohibited elsewhere in this article.

(b) Approval authority. All all sewer service contracts whether inside or outside the regional agent boundary shall be approved by the City Council with the recommendation of the Planning Commission.

Sec. 35-5024. Variances.

(a) A variance from any of the provisions of this article which are preempted by the provisions of V.T.C.A., Local Government Code Chapter 395 may not be granted. The appeal process established in V.T.C.A., Local Government Code Section 395.077 may be followed.

(b) The City Council may grant variances to any provisions of this article which are not preempted by the statutory provisions of V.T.C.A., Local Government Code Chapter 395 after a recommendation from the Planning Commission. The failure of the Commission to act upon a variance request within thirty (30) days after the date of official submission to the Commission shall be deemed a recommendation for approval unless a longer period is granted by the City Council or the submitting applicant. The City Council decision may be appealed in accordance with the procedures set out in V.T.C.A., Local Government Code Section 395.077.

Sec. 35-5025. Maximum impact fee.

The maximum impact fee per equivalent dwelling unit (EDU) shall be determined by dividing the total estimated or known costs to develop sanitary sewer facilities to meet the needs of new development as projected by the land use assumptions within a particular service area by the number of EDUs projected to develop within the same area over the time period specified in the land use assumptions. Operations, maintenance, and replacement costs of the city's sanitary sewer system shall not be included in the calculation of the impact fee.

Sec. 35-5026. Criteria for impact fees.

(a) Impact fees shall only be assessed to aid in funding the costs of providing capital improvements which are necessitated by and attributable to new development which must pay the fees in service areas designated in the Capital Improvements Plan (CIP).

(b) Impact fees shall be assessed on an service area basis as specified in the CIP. Fees collected within a given service area shall not be spent for any purpose other than for projects specified in the CIP for that service area.

(c) Impact fees do not include dedication of rights-of-way or easements or construction or dedication of on-site sanitary sewer collection facilities if such construction is required by a valid ordinance and is necessitated by and attributable to the new development; nor do they include lot or acreage fees to be placed in trust funds for the purpose of reimbursing developers for oversizing or constructing sanitary sewer mains or lines under the

terms of a reimbursement agreement. An impact fee and an acreage fee cannot be assessed and collected for the same sanitary sewer facilities.

Sec. 35-5027. Exemptions.

(a) Property which, prior to the effective date of this article, is already platted, has met all requirements for sanitary sewer service of this code, and for which all sewer platting fees have been paid, is exempt from the requirements of this article. However, after the effective date of this article, should such property be replatted or an activity constituting new development occur thereon, and such replatting or activity increases the number of equivalent dwelling units generated by such property, such increase shall not be exempt from impact fees.

(b) Property shall not be considered new development if the requirements specified below were met prior to the effective date of this article.

(1) Outside the regional agent boundary. The developer has an approved sewer service contract in which wastewater capacity has been committed to the property by the city, subject to the following limitations:

a. If the developer has not paid the treatment component, but has paid the collection component of the sewer platting fee, either by direct payment to the city or by having paid for the construction of the off-site sewer line serving his development at a cost equal to the collection fee he otherwise would have paid at the time of plat approval, then the property is exempt only from the collection component of the impact fee.

b. If the developer has not paid the collection component, but has paid the treatment component of the sewer platting fee, either by direct payment to the city or by having paid for the construction of the sewer treatment capacity serving his development at a cost equal to the treatment fee he otherwise would have paid at the time of plat approval, then the property is exempt only from the treatment component of the impact fee.

(2) Inside the regional agent boundary. The developer shall have met all the requirements of Division 6, Article IV of this code for the extension of sanitary sewer service and shall have paid the required sewer platting fee or paid for the construction of off-site sanitary sewer facilities serving his development at a cost equal to the sewer platting fee he otherwise would have paid at the time of plat approval.

(c) Section 35-4262 of this code which provides for the extension of sewer mains to single family residential lots platted prior to July 6, 1970, is not altered by this article.

Sec. 35-5028. Vested rights.

(a) Creation. Vested rights to sanitary sewer treatment and/or collection capacity shall be granted by the city for developments which have met the requirements either under the provisions of this article or under the regulations which were in effect prior to the effective date of this article. Once the city accepts an impact fee, a vested right in sanitary sewer facilities is created for the purchasing developer and that vested right becomes an appurtenance to the property being served.

(b) Minimum capacity. Vested rights for up to four (4) equivalent dwelling units (EDUs) per net acre may only be transferred or assigned as part of a real estate transaction in which the property being served is itself transferred. Vested rights as represented by sewer capacity in excess of four (4) EDUs per net acre may be either transferred or assigned as part of a real estate transaction in which the property being served is itself transferred, or, with the approval of the City Council, assigned for use by another property.

(c) Fee payment. While vested rights to either treatment or collection capacity will be recognized under the conditions set forth herein, the developer must pay (either in the form of cash or credits) the fully assessed impact fee, or sewer platting fee levied prior to the effective date of this article, before the city shall allow wastewater flows from the on-site system of a development to be discharged into the off-site sewer system.

(d) City recognition. The city recognizes vested sewer rights as follows:

(1) Inside the regional agent boundary. A developer has a vested right to that off-site sanitary sewer capacity serving his development if the city has received from the developer the sewer platting fee or impact fee, either in the form of a direct payment to the city or by having paid for the construction of off-site sewer facilities at a cost which at least equals the sewer platting fee or impact fee he otherwise would have paid at the time of plat approval.

(2) Outside the regional agent boundary.

a. Collection system capacity. A developer has a vested right to the sanitary sewer collection system capacity in an off-site sewer line serving his development if the developer and the city have executed a sewer service contract in which collection capacity has been committed to the development by the city and the developer has paid the collection component of the sewer platting fee or impact fee as specified in the terms of the sewer service contract, either in the form of a direct payment to the city or by having paid for the construction of the off-site

sanitary sewer capacity at a cost which at least equals the collection fee component he otherwise would have paid at the time of plat approval.

b. Treatment system capacity. A developer has a vested right to the sanitary sewer treatment system capacity at a wastewater treatment plant serving his development if the developer and the city have executed a sewer service contract in which treatment capacity has been committed to the development by the city and the developer has paid the treatment component of the sewer platting fee or impact fee as specified in the terms of the sewer service contract, either in the form of a direct payment to the city or by having paid for the construction of treatment facilities at a cost which at least equals the treatment component he otherwise would have paid at the time of plat approval.

(e) Flows from other developments. The city reserves the right to connect wastewater flows from other developments to on-site and/or off-site sanitary sewer systems which serve existing developments, regardless of whether such systems were oversized to accommodate the additional wastewater flows. However, in order to preserve the vested rights of the existing development, the city commits to the following:

(1) The city shall maintain records regarding a developer's vested rights in sanitary sewer systems. In the event the developer exceeds those rights as a result of any subsequent platting or replatting of property, the city shall have the right to refuse to accept the excessive flows into the city sanitary sewer system or to assess the developer the appropriate additional impact fee.

(2) The city retains exclusive ownership of the capacity in all sanitary sewer facilities under its control. The city shall, however, continue to serve a development for which impact fees or platting fees have been paid by recognizing the vested rights of the developer. The developer shall not be denied service solely on the basis that the remaining sanitary sewer capacity for a given development is insufficient to accommodate the flows of anticipated development when such insufficiency is the result of the city connecting other development generated flows to the sanitary sewer system serving the developer's property.

(3) The city shall provide a plan, prior to permitting the construction of the connection, demonstrating how any proposed temporary use of sanitary sewer capacity otherwise committed to a developer shall eventually be accommodated through new sanitary sewer construction. The city shall consider any comments the developer may have to this plan prior to permitting a temporary connection to the developer's sanitary sewer capacity.

(4) The city acknowledges its obligation to guarantee a developer's vested right to on-site and/or off-site sanitary sewer capacity serving his property in order that the developer may achieve reasonable, timely, and complete platted development of his property and meet any contractual obligations he may have made based on the assumption of having guaranteed sanitary sewer capacity.

(f) Use of another's vested right. When a subsequent developer wishes to utilize sanitary sewer capacity which has already been recognized as a vested right in accordance with this article, the city may permit the developer to utilize that capacity only if the developer meets all of the conditions listed below.

(1) The subsequent developer shall enter into a reserve capacity agreement with the city agreeing that the city shall reserve capacity in a future capital improvements project, with the added provision that the capital improvement would serve his development at such time as the city determines sanitary sewer demand in the service area warrants the construction of additional treatment and/or collection capacity.

(2) The subsequent developer shall further agree not to require the city to construct the additional treatment and/or collection capacity in accordance with the timing requirements specified in V.T.C.A., Local Government Code Chapter 395.

(3) Prior to the execution of the agreement by the city, the subsequent developer shall pay the required collection and/or treatment component of the impact fee in accordance with the rate schedule in Exhibit E.

Sec. 35-5029. Credits.

(a) Credit categories. Records of impact fee credits and sewer platting fee credits established by contract or through the provisions of Division 6, Article IV of this code prior to the effective date of this article shall be maintained by the city in separate accounts as follows:

(1) There are four categories of credits which shall be maintained in terms of equivalent dwelling units.

a. Inside the regional agent boundary/inside the city limits credits.

b. Inside the regional agent boundary/outside the city limits credits.

c. Outside the regional agent boundary collection fee credits.

d. Outside the regional agent boundary treatment fee credits.

(2) Acreage credits. Certain sewer service contracts executed prior to the effective date of this article provide for the creation of collection fee credits on a acreage basis outside the regional agent boundary.

(b) Conditions necessary to transfer credits. Credits may be transferred from one development to another provided the development for which credits are to be used is located within the same watershed as the development for which the credits were earned and provided an off-site line with sufficient excess capacity to serve the new development is available or under construction. Exhibit E contains a map which displays the watersheds applicable to this section.

(c) Credits which may be transferred. The number of credits which may be transferred to other developments shall equal the total number of credits in the developer's account, by appropriate category, minus the number of equivalent dwelling units required for the original development.

(d) Determination of credits.

(1) Equivalent dwelling unit credits.

a. Transfer of credits between developments located within the same city limits area inside the regional agent boundary or within the area outside the regional agent boundary. A developer shall be credited with the number of equivalent dwelling units as determined by dividing the as-built construction costs of the off-site sewer collection and/or treatment facilities constructed by the developer, including any required oversizing, by the applicable impact fee rate in effect at the time of the facilities' acceptance by the city. For facilities accepted prior to the effective date of this article, the impact fee rate to be used shall be that rate approved on the date of enactment of this article. These credits may be transferred on an one-for-one basis.

b. Transfer of credits between developments located within different city limits areas inside the regional agent boundary or within different service areas. A developer shall be credited with the number of equivalent dwelling units as determined by dividing the as-built construction costs of the off-site sewer collection and/or treatment facilities constructed by the developer, including any required oversizing, by the impact fee rate for the area into which the developer wishes to transfer the credits in effect at the time of plat approval of the new development.

(2) Acreage credits.

a. Acreage credits may be applied on an acre-for-acre basis in lieu of impact fees only to the development for which they were originally earned.

b. To transfer acreage credits to another development outside the regional agent boundary, they must first be converted into equivalent dwelling unit (EDU) credits at a ratio of four (4) EDUs per net acre.

Commentary: The above conversion ratio is calculated by multiplying each acreage credit by \$900 and dividing the result by \$225 which is the collection fee component rate adopted on the effective date of this article for the area outside the regional agent boundary.

c. To transfer acreage credits to a development inside the regional agent boundary, a developer shall be credited with the number of equivalent dwelling units as determined by multiplying the acreage credits to be transferred by \$900 and dividing the result by the impact fee rate for the area into which the developer wishes to transfer the credits in effect at the time of plat approval of the new development.

Sec. 35-5030. Distinction between vested rights and credits.

(a) Credits, once established in accordance with Section 35-5029, shall first be applied against the impact fee required to create a vested right. Any credits remaining after such application may be transferred in the manner set out in Section 35-5029.

(b) Vested rights, once established in accordance with Section 35-5028 are not transferable but may be assigned subject to the limitations set out in Section 35-5028(b).

Sec. 35-5031. Procedures for assessment and collection.

(a) Assessment. An impact fee shall be assessed at the time of plat approval based upon the number of equivalent dwelling units (EDUs) to be generated by the development at the fee rate per EDU specified in Exhibit E. In no event shall an impact fee exceed by ten (10) percent the maximum impact fee per service unit.

(b) Determination of equivalent dwelling units.

(1) A developer shall present documentation indicating the number of equivalent dwelling units (EDUs) that the development requires from the relevant water purveyor. The Director shall determine the number of sanitary sewer EDUs equivalent to the water service requirement. If the developer wishes to demonstrate that his development's water consumption will be not be equivalent to its sewage discharge, he shall submit an engineering report prepared by a professional engineer

registered in the State of Texas certifying the reasons why the amount of sewage discharged from the development will not be equivalent to the development's water requirement.

(2) If the developer is uncertain as to the projected land use for the property he wishes to plat, then the impact fee may be assessed at a minimum rate of four (4) EDUs per net acre.

(c) Collection. Assessed impact fees, including those due under the terms of Division 6, Article IV of this code or under the terms of a sewer service contract, are due and payable prior to the time of plat recordation. The city's time period within which to supply sewer service to a particular property shall commence upon payment of the impact fee.

(d) Payment agreements. For property that has been platted, but is not exempt from impact fees and requires sewer service, the impact fee shall be assessed and collected in accordance with a payment agreement.

(e) Conditions under which impact fees shall not be accepted. The city shall not accept an impact fees if both of the conditions listed below are in effect. Developers with property meeting both of these conditions have the option of seeking service by sewer service contract.

(1) The development requiring service does not have an off-site sewer line available or under construction to serve the property.

(2) The development requiring service cannot be served by a project listed in the Capital Improvements Plan.

Sec. 35-5032. Refund and overpayment procedures.

(a) If the city has failed to fulfill the timing requirements for the construction of a capital improvement specified in the Capital Improvements Plan after having accepted impact fees for such improvement, then the city must refund all received fees for the capital improvement in accordance with the procedures in V.T.C.A., Local Government Code Chapter 395.

(b) If the city has overcharged developers in a service area in its assessment of impact fees, then the city must refund to the developers the difference between the impact fees received and the actual costs of capital improvement construction in accordance with the procedures in V.T.C.A., Local Government Code Chapter 395.

(c) If a dispute arises over who qualifies as a developer for the purpose of receiving an impact fee refund, the city shall place the refund monies into an escrow account until a court of competent jurisdiction can decide the matter. If after five (5) years, no decision has been made as to the disposition of the refund monies and a lawsuit is not pending, the monies shall revert to the city

sewer fund in the same manner personal property presumed abandoned under state law reverts to the state treasury.

Sec. 35-5033. Amendments.

The procedures set out in V.T.C.A., Local Government Code Chapter 395 shall be followed to amend the land use assumptions, the capital improvements plan, or the impact fee rates.

Sec. 35-5041. Economic development policy exception.

(a) The City Council may authorize on a case-by-case basis payment from the city's sewer enterprise fund for part or all of an assessed impact fee for a given development in order to advance the objectives of city economic development policies as stated in Resolution No. 89-07-12 and Ordinance No. 70915.

(b) Criteria to be considered for making this authorization include the following:

(1) The development would likely contribute to the retention or expansion of primary employment or attract major investment, and would be a benefit to the property that would contribute to the economic development of the city.

(2) The development would likely prevent an area from becoming an economic or social liability, and a menace to public health, safety, morals, or welfare.

(3) The property for development lies within a designated enterprise zone.

(4) The development has met the guidelines and criteria and has received City Council approval for a tax abatement.

Commentary: Additional criteria for authorizing city sewer fund payment of all or part of an assessed impact fee to further economic development objectives may be added to this section as those criteria are approved by the City Council.

Sec. 35-5042. Limit on chargeable equivalent dwelling units.

The provisions of this division notwithstanding, in no event shall the city assess or collect an impact fee for any amount in excess of five (5) equivalent dwelling units (EDUs) per acre inside the regional agent boundary or in excess of four (4) EDUs per acre for the collection component of the impact fee outside the regional agent boundary. Outside the regional agent boundary, there shall be no limitation in terms of EDUs per acre on assessing or collecting the treatment component of the impact fee.

Commentary: This limitation is to ensure that there is no adverse impact on the city's economy in the assessment and collection of

impact fees consistent with the city policy to encourage economic development.

7. REVISE EXHIBIT E TO READ:

Sec. 35-E101. Sanitary sewer impact fees.

The following sanitary sewer impact fees are established per equivalent dwelling unit. Fees shall be paid prior to plat recordation unless an approved sewer service contract provides otherwise.

- (a) Inside the regional agent boundary and inside the city limits \$120
- (b) Inside the regional agent boundary and outside the city limits \$240
- (c) Outside the regional agent boundary:
 - (1) Treatment component \$750
 - (2) Collection component \$225

SANITARY SEWER IMPACT FEES

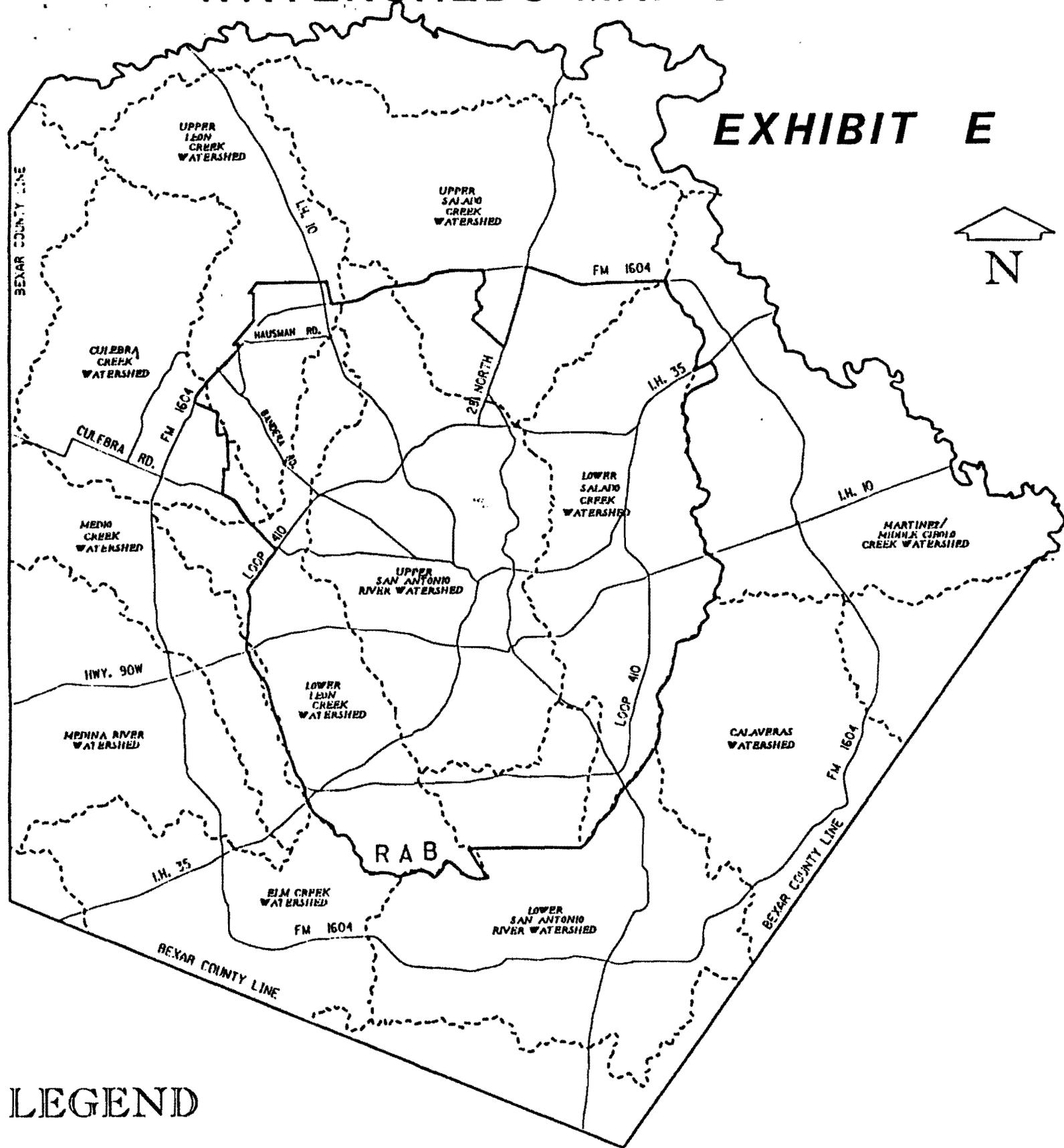
Sanitary Sewer impact fees shall be paid prior to plat recordation.

1. Inside the regional agent boundary and inside the city limits:
\$120 per equivalent dwelling unit
2. Inside the regional agent boundary and outside the city limits:
\$240 per equivalent dwelling unit
3. Outside the regional agent boundary - treatment component:
\$750 per equivalent dwelling unit
4. Outside the regional agent boundary - collection component:
\$225 per equivalent dwelling unit

Attach. A II

WATERSHEDS MAP

EXHIBIT E

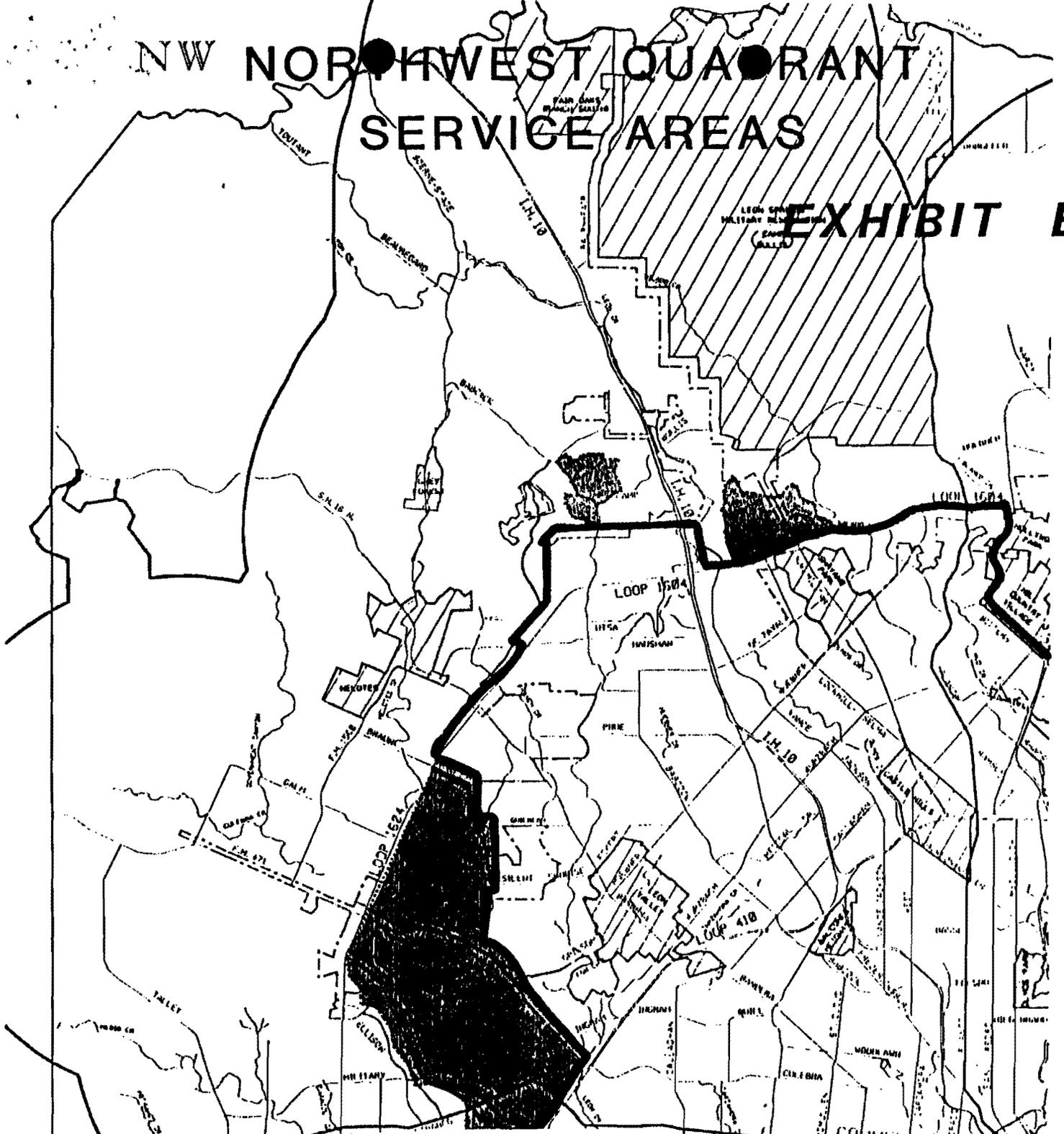


LEGEND

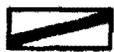
- PRIMARY HIGHWAYS
- REGIONAL AGENT BOUNDARY
- - - - WATERSHED BOUNDARIES

NW NORTHWEST QUADRANT SERVICE AREAS

EXHIBIT E



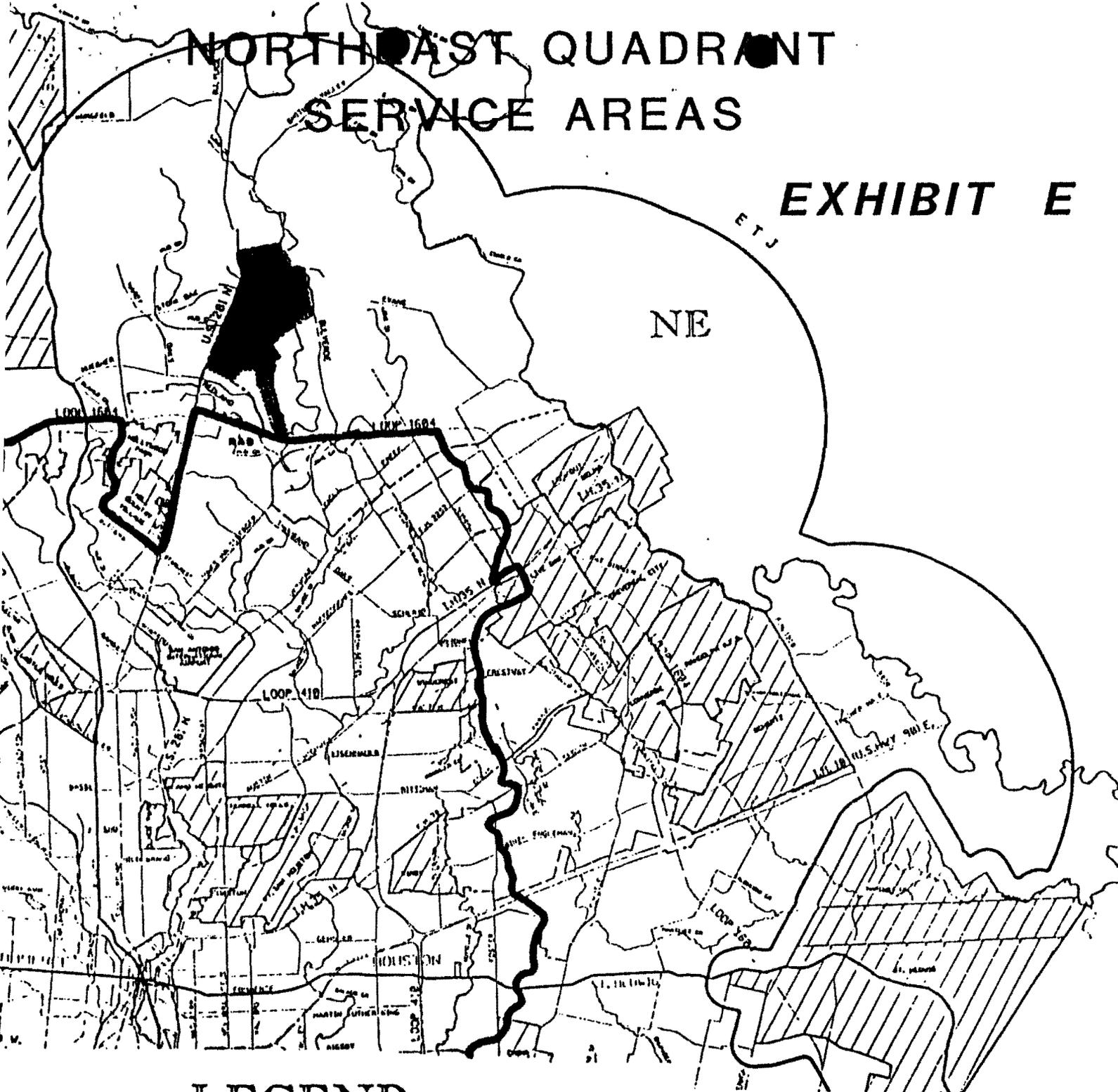
LEGEND

-  REGIONAL AGENT BOUNDARY (R.A.B.)
-  INCORPORATED CITIES AND MILITARY BASES
-  PLANNING COMMISSION DESIGNATED SEWER SERVICE AREA
-  SAN ANTONIO CITY LIMITS
-  SAN ANTONIO EXTRA TERRITORIAL JURISDICTION (E.T.J.)



NORTHEAST QUADRANT SERVICE AREAS

EXHIBIT E



LEGEND

-  REGIONAL AGENT BOUNDARY (R.A.B.)
-  INCORPORATED CITIES AND MILITARY BASES
-  PLANNING COMMISSION DESIGNATED SEWER SERVICE AREA
-  SAN ANTONIO CITY LIMITS
-  SAN ANTONIO EXTRA TERRITORIAL JURISDICTION (E.T.J)



● SOUTHWEST QUADRANT SERVICE AREAS

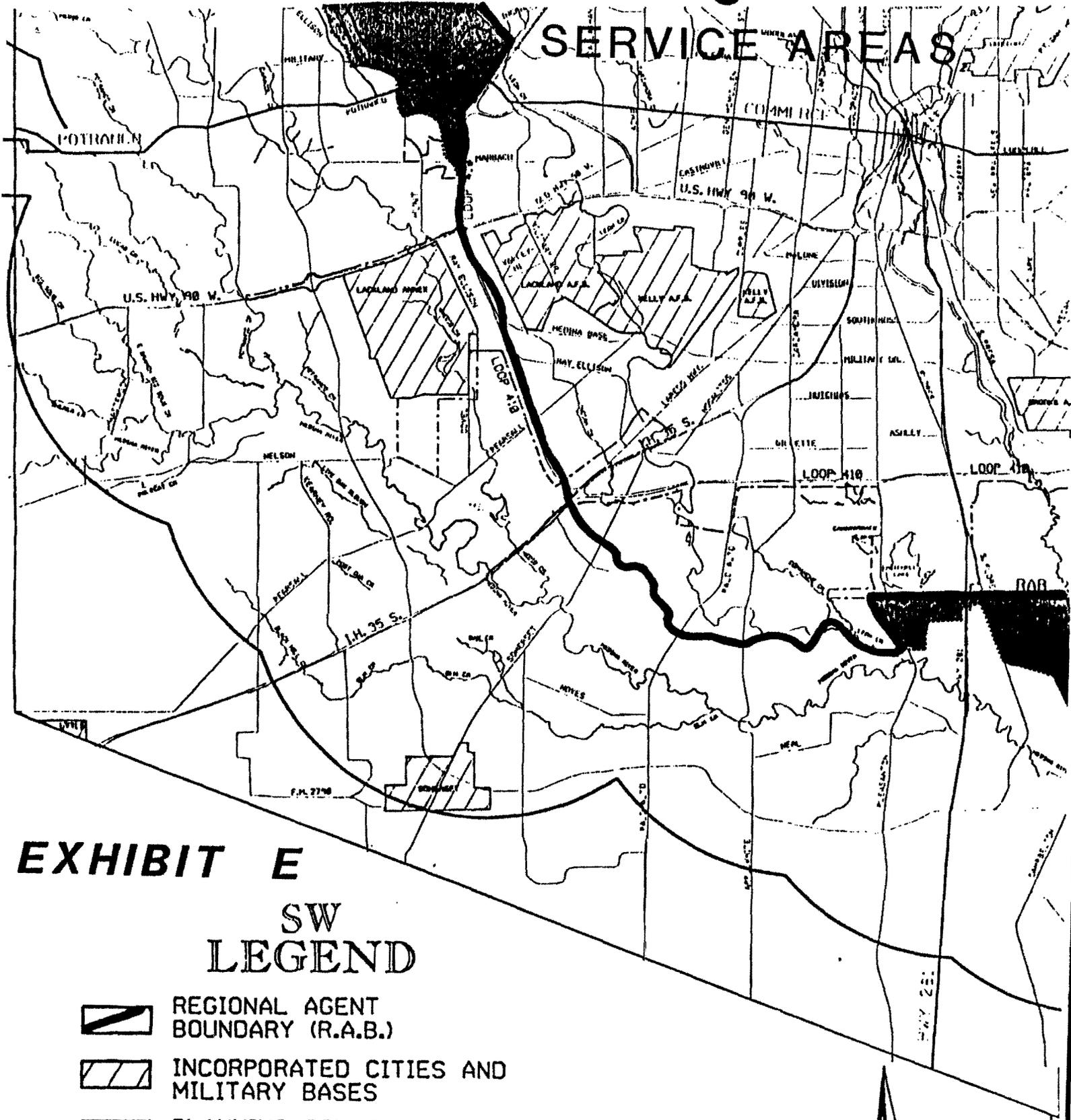
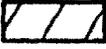


EXHIBIT E SW LEGEND

-  REGIONAL AGENT BOUNDARY (R.A.B.)
-  INCORPORATED CITIES AND MILITARY BASES
-  PLANNING COMMISSION DESIGNATED SEWER SERVICE AREA
-  SAN ANTONIO CITY LIMITS
-  SAN ANTONIO EXTRA TERRITORIAL JURISDICTION (E.T.J.)



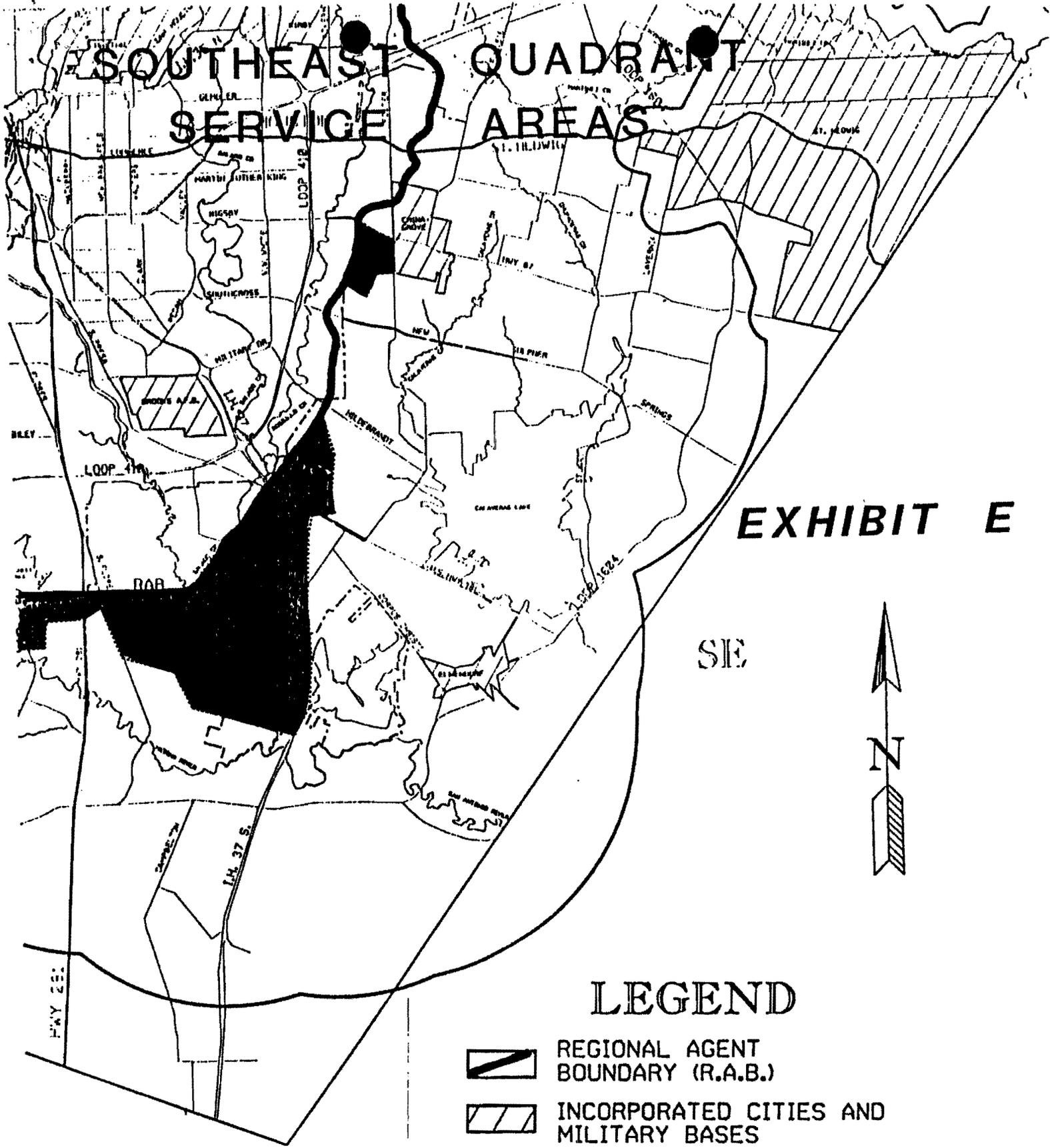


EXHIBIT E

SE



LEGEND

-  REGIONAL AGENT BOUNDARY (R.A.B.)
-  INCORPORATED CITIES AND MILITARY BASES
-  PLANNING COMMISSION DESIGNATED SEWER SERVICE AREA
-  SAN ANTONIO CITY LIMITS
-  SAN ANTONIO EXTRA TERRITORIAL JURISDICTION (E.T.J)

SANITARY SEWER IMPACT FEES CODE AMENDMENTS OUTLINE
June 7, 1990

- Background

- Senate Bill 336 (Chapter 395, Local Government Code) requires that if a city wishes to charge a fee to new development for extension of sewerage infrastructure, it must justify it through the Land Use Assumptions/Capital Improvements Plan process
- Goal of staff's proposed impact fees program is to maintain current sewer platting fee rate structure until the wastewater master plan can be thoroughly updated
 - However, the law requires that impact fee rate be set per service unit (equivalent dwelling unit - EDU) which is a measure of wastewater flow as opposed to the current sewer platting fee which is charged largely on a per acre basis
 - Also, the law prohibits an impact fee rate from distinguishing between classes of users (i.e. residential vs. industrial) which our current sewer platting fee does now
 - Implementing ordinance must change Unified Development Code (UDC) to address these issues

- Key Ordinance Provisions

- Establishes two service areas, each with unique policies:
 - Outside the Regional Agent Boundary (ORAB): service by sewer service contract only
 - Inside the Regional Agent Boundary (IRAB): service by UDC, if off-site line available or in budget to be built, else service will be by contract
- Establishes separate rate schedules for each service area which charge per EDU versus per acre regardless of user classification; IRAB - single-tiered fee different for ICL/OCL; ORAB - two-tiered fee
- Designates City Council as approval authority for sewer service contracts in ORAB and IRAB
- Provides uniform language governing establishment and transference of sewer platting fee credits, created under the present system, and of impact fee credits to be created under the proposed system
 - There is no language in the UDC governing sewer platting credits which were created in the past in the IRAB
 - In the ORAB, credits have been issued under many different, sometimes inconsistent sewer service contracts

Attach. B I

- Draft code amendments provide protection to acre fee credits under pre-impact fee contracts; otherwise all credits would be converted into EDU credits
- Draft code amendments state that EDU credits are created when a developer builds sewerage facilities at his cost
 - Credits limited to dollar value of the as-built costs of the facilities built; cost then divided by impact fee rate in effect at time of facilities' acceptance to determine number of EDU credits
 - Credits are transferable to other projects once the amount of EDU's needed to serve the original development is subtracted
 - Transferable credits will be applied on an EDU-for-EDU basis to a project which is in the same watershed and service area as the original development from which the credits were earned and there is an available off-site line or one under construction to serve the property
- Creates vested rights in sewerage capacity for a developer who has paid the construction costs for a sewer line serving his development but who has yet to fully plat the remaining parcels of his development
 - Currently, developers have no guarantee of sewerage capacity until they pay all of their sewer platting fees
- Ties a developer's sewer requirement to his corresponding water requirement in terms of EDU's
 - Ensures that Wastewater Management knows how much water is likely to be discharged into sewers; allows for adjustment, if engineer certifies reason for different levels of water usage and corresponding wastewater discharge
 - In lieu of known projected land use, property charged at impact rate of 3,000 gallons per day per acre or 4 EDU's per acre
- Provides for City Council to authorize payment from the sewer fund part or all of an assessed impact fee in furtherance of economic development objectives (i.e. tax abatement guidelines, enterprise zones)
- Conclusion
 - Goal of ordinance is to ensure compliance with Senate Bill 336 and to protect the city's interests by shoring up those aspects of sewer extension policies that are no longer relevant or clear in light of the state law requirements

**SAN ANTONIO PLANNING COMMISSION
RESOLUTION NO. 90-06-05**

**RECOMMENDING TO THE CITY COUNCIL THE ADOPTION
OF AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE
TO IMPLEMENT AN IMPACT FEE PROGRAM FOR SANITARY
SEWER AND WATER FACILITIES, RESPECTIVELY, IN
ACCORDANCE WITH CHAPTER 395 OF LOCAL GOVERNMENT
CODE, VERNON'S TEXAS CODES ANNOTATED.**

*** * * * ***

WHEREAS, the City of San Antonio is authorized by Chapter 395 of the Local Government Code, Vernon's Texas Codes Annotated, (hereinafter referred to as the Local Government Code) to enact impact fees to finance capital improvements required by new development; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, on August 10, 1989, after a duly publicized public hearing, the City adopted a Land Use Assumptions document projecting levels of new development to occur within the City limits and extraterritorial jurisdiction over a ten year period from 1988 to 1998; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, on May 10, 1990, after a duly publicized public hearing, the City designated the service areas to be used to develop capital improvement plans for sanitary sewer and water facilities, respectively, and adopted an amendment to the Land Use Assumptions document clarifying certain forecasting assumptions; and

WHEREAS, in accordance with Chapter 395 of the Local Government Code, the City has prepared capital improvement plans and impact fee rate schedules for sanitary sewer and water facilities, respectively, to provide service to new development within designated service areas; and

WHEREAS, the Planning Commission by resolution has recommended to the City Council that the capital improvement plans and impact fee rate schedules for sanitary sewer and water facilities, respectively, be adopted; and

WHEREAS, implementation of an impact fee program requires amendment to certain provisions of the Unified Development Code of the City of San Antonio; and

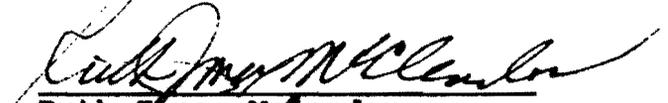
WHEREAS, the Planning Commission held a public hearing on proposed amendments to the Unified Development Code; **NOW THEREFORE:**

BE IT RESOLVED THE PLANNING COMMISSION OF THE CITY OF SAN ANTONIO:

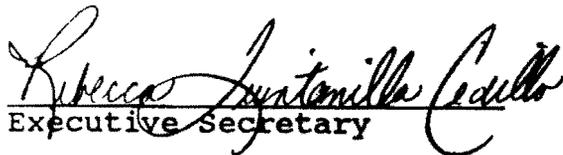
The amendments to the Unified Development Code given at Attachment I are hereby recommended for adoption by the City Council.

PASSED AND APPROVED this 13th day of June, 19 90.

APPROVED:


Ruth Jones-McLendon
Chairman

ATTEST:


Executive Secretary

DRAFT

BECAUSE, the City of San Antonio has an opportunity to assess the cost of new development to those that benefit from it; and

BECAUSE, the rate payers in San Antonio are struggling to meet costs to provide basic services in our city; and

BECAUSE, responsible growth in San Antonio is more likely to occur when an accurate assessment of cost is identified and charged: Therefore be it

RESOLVED,

A) The accurate assessment of impact fees necessarily includes the cost of surface water attributable to new development. It is the city council's intent to see the cost of Applewhite attributable to new development included in future impact fee calculations.

B) Council calls for further work by staff to develop new land use assumptions and update capital improvement plans so fees reflect all eligible costs. The staff is directed to establish a calendar to provide for a public hearing on land use assumptions on or about September 1990 and for a public hearing on Capital Improvement Plans and new fees on or about January 1991.

*For Items 7, 8, 9, 10
To Be Included in all 4 Ord.*

REVISED ORDER FOR CONSIDERATION OF IMPACT FEE ORDINANCES

**AGENDA
ITEM
NUMBER**

- 9 Public Hearing and Consideration of An Ordinance adopting the City Water Board Capital Improvements Plan.
- 10 Public Hearing and Consideration of An Ordinance adopting the City Water Board amendments to the Regulations for Water Service which also includes the impact fee rate schedules.
- 7 Public Hearing and Consideration of An Ordinance adopting the Sanitary Sewer Capital Improvements Plan and impact fee schedule.
- 8 Public Hearing and consideration of An Ordinance adopting amendments of the Unified Development Code which establishes the sanitary sewer and water facilities impact fee programs for the City.

THIS REVISED ORDER FOR CONSIDERATION OF THE IMPACT FEE ORDINANCES IS NECESSARY BECAUSE THE ORDINANCE ADOPTING THE AMENDMENTS TO THE CITY WATER BOARD REGULATIONS FOR WATER SERVICE SHOULD OCCUR PRIOR TO THE ORDINANCE ADOPTING THE AMENDMENTS TO THE UNIFIED DEVELOPMENT CODE.

PUBLIC HEARING & ORDINANCE

ADOPTING AMENDMENTS OF THE UNIFIED DEVELOPMENT CODE WHICH ESTABLISH THE SANITARY SEWER AND WATER FACILITIES IMPACT FREE PROGRAMS.

ITEM NO. 8

JUN 14 1990

MEETING OF THE CITY COUNCIL

DATE: _____

MOTION BY: Dutmer

SECONDED BY: Vera

71729

ORD. NO. _____

ZONING CASE _____

RESOL. _____

PETITION _____

- ARTS & CULTURAL AFFAIRS
- AVIATION
- BUDGET & RESEARCH
- BUILDING INSPECTIONS
- BUILDING INSPECTIONS-HOUSE NUMBERING
- CITY ATTORNEY
- ~~COMMUNITY DEVELOPMENT~~ MUNICIPAL COURT
- REAL ESTATE (FASSNIDGE)
- REAL ESTATE (WOOD)
- TRIAL SECTION
- CITY MANAGER
- KAREN DAVIS, ASST. TO THE MANAGER
- CODE COMPLIANCE
- SPECIAL PROJECTS
- CITY PUBLIC SERVICE
- CITY PUBLIC SERVICE-MAPS & RECORDS
- CITY WATER BOARD
- COMMERCIAL RECORDER
- COMMUNITY DEVELOPMENT (BASEMENT)
- CONVENTION & VISITORS BUREAU
- CONVENTION FACILITIES
- DOMESTIC DEVELOPMENT OFFICE
- DOWNTOWN INITIATIVES
- ECONOMIC & EMPLOYMENT DEVELOPMENT (DEED)
- ENVIRONMENTAL MANAGEMENT
- FINANCE DIRECTOR
- ASSESSOR
- CONTROLLER
- GRANTS
- RISK MANAGEMENT
- TREASURY
- FIRE DEPARTMENT
- HUMAN RESOURCES & SERVICES
- INFORMATION RESOURCES
- INTERNATIONAL RELATIONS
- LIBRARY
- MARKET SQUARE
- METROPOLITAN HEALTH DISTRICT
- MUNICIPAL CODE CORPORATION (PUBLICATION)
- MUNICIPAL COURTS
- PARKS & RECREATION
- PERSONNEL
- PLANNING
- ZONING ADMINISTRATION
- POLICE DEPARTMENT
- PUBLIC UTILITIES
- PUBLIC WORKS
- CAPITAL PROJECTS MANAGEMENT
- CENTRAL MAPPING
- ENGINEERING
- REAL ESTATE (BILL TOUDOUZE)
- TRAFFIC ENGINEERING
- PURCHASING & GENERAL SERVICES
- WATER RESOURCES MANAGEMENT
- SUSIE A. (PUBLIC)

	ROLL CALL	AYES	NAYS
MARIA BERRIOZABAL PLACE 1		✓	
JOE WEBB PLACE 2		✓	
HELEN DUTMER PLACE 3		✓	
FRANK D. WING PLACE 4		✓	
WALTER MARTINEZ PLACE 5		✓	
BOB THOMPSON PLACE 6		✓	
YOLANDA VERA PLACE 7		✓	
NELSON WOLFF PLACE 8		✓	
WEIR LABATT PLACE 9		✓	
JAMES C. HASSLOCHER PLACE 10		also ✓	
LILA COCKRELL PLACE 11 (MAYOR)		✓	

AMENDS CHAP. 35 OF CITY CODE!
 Keep in place the Committee of 7 to be by
 12 min. w/ Resolution

90-26

FILE CHAP. 35
 10" A.W.B. (1)