



**US Army Corps
of Engineers**
Fort Worth District

Public Notice

Applicant: Ryno Texas Holding, Inc.

Permit Application No.: SWF-2004-00182

Date: July 6, 2018

The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

Regulatory Program

Since its early history, the U.S. Army Corps of Engineers has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the U.S. Army Corps of Engineers Regulatory Program.

Section 10

The U.S. Army Corps of Engineers is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate *all work or structures in or affecting the course, condition or capacity of navigable waters of the United States*. The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

Section 404

The U.S. Army Corps of Engineers is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the *discharge of dredged and fill material into all waters of the United States, including wetlands*. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

Contact

Name: Mr. Neil Lebsock

Phone Number: (817)886-1743

JOINT PUBLIC NOTICE

U.S. ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

AND

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

SUBJECT: The U.S. Army Corps of Engineers (USACE) is currently reviewing the previously authorized Department of the Army Permit Number SWF-2004-00182 under Section 404 of the Clean Water Act (CWA) and for water quality certification under Section 401 of the CWA to discharge dredged and fill material into waters of the United States associated with the construction of a multi-use commercial and retail development in Tyler, Smith County, Texas.

APPLICANT: Mr. Brandon Steele
Ryno Texas Holding, Inc.
P.O. Box 132569
Tyler, Texas 75703

APPLICATION NUMBER: SWF-2004-00182

DATE ISSUED: June 21, 2018

LOCATION: Northwest corner of Farm-to-Market 2493 (Old Jacksonville Highway) and South Highway 57 (Grande Boulevard) in Smith County, Texas. The proposed project would be located approximately at UTM coordinates 280206.6 East and 3573894.126 North (Zone 15) on the Tyler South 7.5-minute USGS quadrangle map in the USGS Hydrologic Unit 12020004.

OTHER AGENCY AUTHORIZATIONS: State Water Quality Certification

BACKGROUND: On August 11, 2006, USACE Section 404 of the Clean Water Act permit authorized the discharge of approximately 6,000 cubic yards of dredged and fill material into 1.28 acres of waters of the United States, including 900 linear feet (0.08 acre) of intermittent tributary and 1.2 acres of emergent and forested wetlands associated with the construction of a commercial development. On November 21, 2013, the USACE approved a request extending the expiration date to December 31, 2015. Two years later, on December 2, 2015, USACE approved a request extending the expiration date to December 31, 2017. On November 22, 2016, following coordination with state and federal resource agencies, USACE approved a permit modification request when the applicant requested changing the type of impact to the 900 linear feet of intermittent tributary from underground box culverts to a 5-acre open water detention

pond. On January 9, 2018, the applicant's agent requested a third extension of time for an additional two years stating the applicant could not construct the detention pond pending a water rights permit. In the meantime, the USACE permit expired and according to regulation 33 CFR 325.6(d), the authorization automatically expires if the permittee (applicant) fails to request and receive an extension of time. Accordingly, USACE cannot modify or authorize an extension of time on an expired permit and must initiate a new standard individual permit process.

PROJECT DESCRIPTION: The purpose of the proposed development is to provide south Tyler residents with retail/grocery shopping, while also promoting economic growth. Since originally authorized, roads (Oak Hill Boulevard, Steele Way, and KPE Way), numerous utility lines and storm sewer pipes have been completed, and wetlands filled. The applicant provided an As Built drawing and proposed Site Plan for the property (Exhibits 1-4 of 4). The As Built shows the locations of the existing roads, utility lines, storm sewer pipes, and wetland fill location, while the Site Plan shows the previously authorized, but not constructed, detention pond.

Remaining work in waters of the United States would include the construction of the 5-acre on-channel detention pond located on the 900 linear feet of intermittent tributary. The detention pond would outfall near the original stream channel on the east side of the development near Farm-to-Market 2493 (Old Jacksonville Highway). Additionally, the applicant would grade and clear the site in preparation for construction of the commercial and retail structures and attendant features.

The applicant has completed compensatory mitigation for unavoidable adverse impacts to waters of the United States by: 1) reforesting 900 linear feet (1:1 mitigation ratio) of degraded intermittent stream channel, and 2) reforesting 3.6-acres (3:1 mitigation ratio) of adjacent wetlands located along the stream channel of West Mud Creek, located within the West Mud Reserve (WMR). All plantings consisted of native tree species. Based on the received monitoring reports, the survival rates of the trees planted achieved success. The West Mud Reserve (WMR) is a 75-acre nature reserve located 9 miles south of the proposed project site and within the same watershed. On behalf of the applicant, West Mud Reserve, LLC dedicated the 3.6-acre mitigation area in perpetuity through deed restriction as a wetland and wildlife preserve. Accordingly, the USACE is not considering additional compensatory mitigation during this review process.

PUBLIC INTEREST REVIEW FACTORS: This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concerns for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be

balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including its cumulative effects. Among the factors addressed are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The USACE is soliciting comments from the public; federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the USACE in determining whether to issue, issue with modifications, or conditions, or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

STATE WATER QUALITY CERTIFICATION: This project incorporates the requirements necessary to comply with the Texas Commission on Environmental Quality's (TCEQ) Tier I project criteria. Tier I projects are those that result in a direct impact of three acres or less of waters of the State or 1,500 linear feet of streams (or a combination of the two is below the threshold) for which the applicant has incorporated best management practices (BMPs) and other provisions designed to safeguard water quality. The USACE has received a completed checklist and signed statement fulfilling Tier I criteria for the project. Accordingly, a request for 401 certification is not necessary and there will be no additional TCEQ review.

ENDANGERED AND THREATENED SPECIES: The USACE has reviewed the U.S. Fish and Wildlife Service's latest published version of endangered and threatened species to determine if any may occur in the project area. The proposed project would be located in a county where the piping plover (*Charadrius melodus*) and red knot (*Calidris canutus rufa*) are known to occur or may occur as migrants. Both of these species are listed as threatened. Our initial review indicates that the proposed work would have no effect on federally-listed endangered or threatened species.

NATIONAL REGISTER OF HISTORIC PLACES: The USACE has reviewed the latest complete published version of the National Register of Historic Places and found no listed properties to be in the project area. However, presently unknown scientific, archaeological, cultural or architectural data may be lost or destroyed by the proposed work under the requested permit.

FLOODPLAIN MANAGEMENT: The USACE is sending a copy of this public notice to the local floodplain administrator. In accordance with 44 CFR part 60 (Flood Plain Management Regulations Criteria for Land Management and Use), the floodplain administrators of participating communities are required to review all proposed development to determine if a floodplain development permit is required and maintain records of such review.

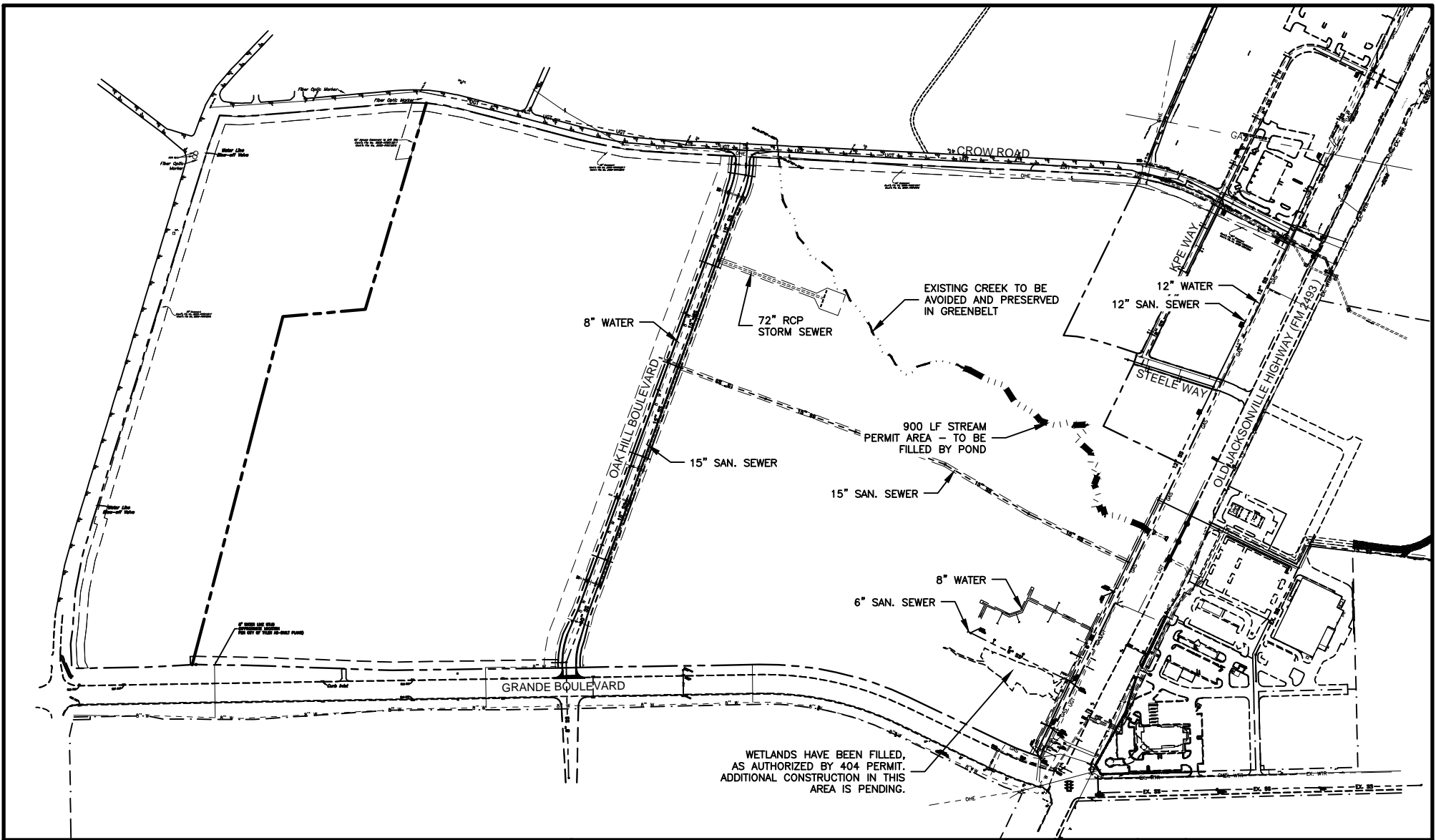
SOLICITATION OF COMMENTS: The public notice is being distributed to all known interested persons in order to assist in developing fact upon which a decision by the USACE may be based. For accuracy and completeness of the record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition.

PUBLIC HEARING: Prior to the close of the comment period any person may make a written request for a public hearing setting forth the particular reasons for the request. The District Engineer will determine whether the issues raised are substantial and should be considered in his permit decision. If a public hearing is warranted, all known interested persons will be notified of the time, date, and location.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before July 23, 2018, which is the close of the comment period. Extensions of the comment period may be granted for valid reasons provided a written request is received by the limiting date. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mr. Neil Lebsock; Regulatory Division, CESWF-DE-RC; U. S. Army Corps of Engineers; Post Office Box 17300; Fort Worth, Texas 76102-0300. Telephone inquiries should be directed to (817) 886-1743. Please note that names and addresses of those who submit comments in response to this public notice may be made publicly available.

DISTRICT ENGINEER
FORT WORTH DISTRICT
CORPS OF ENGINEERS





WEST VILLAGE TYLER, TEXAS

EXHIBIT 3 - AS BUILT

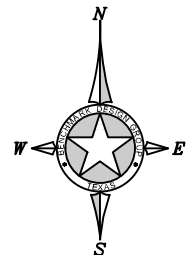
REVISIONS	DATE	BY

BDG JOB NO: 2015.053
 PROJ. MGR: JGM
 PROJ. TECH: JGM
 CHECKED BY: ELS

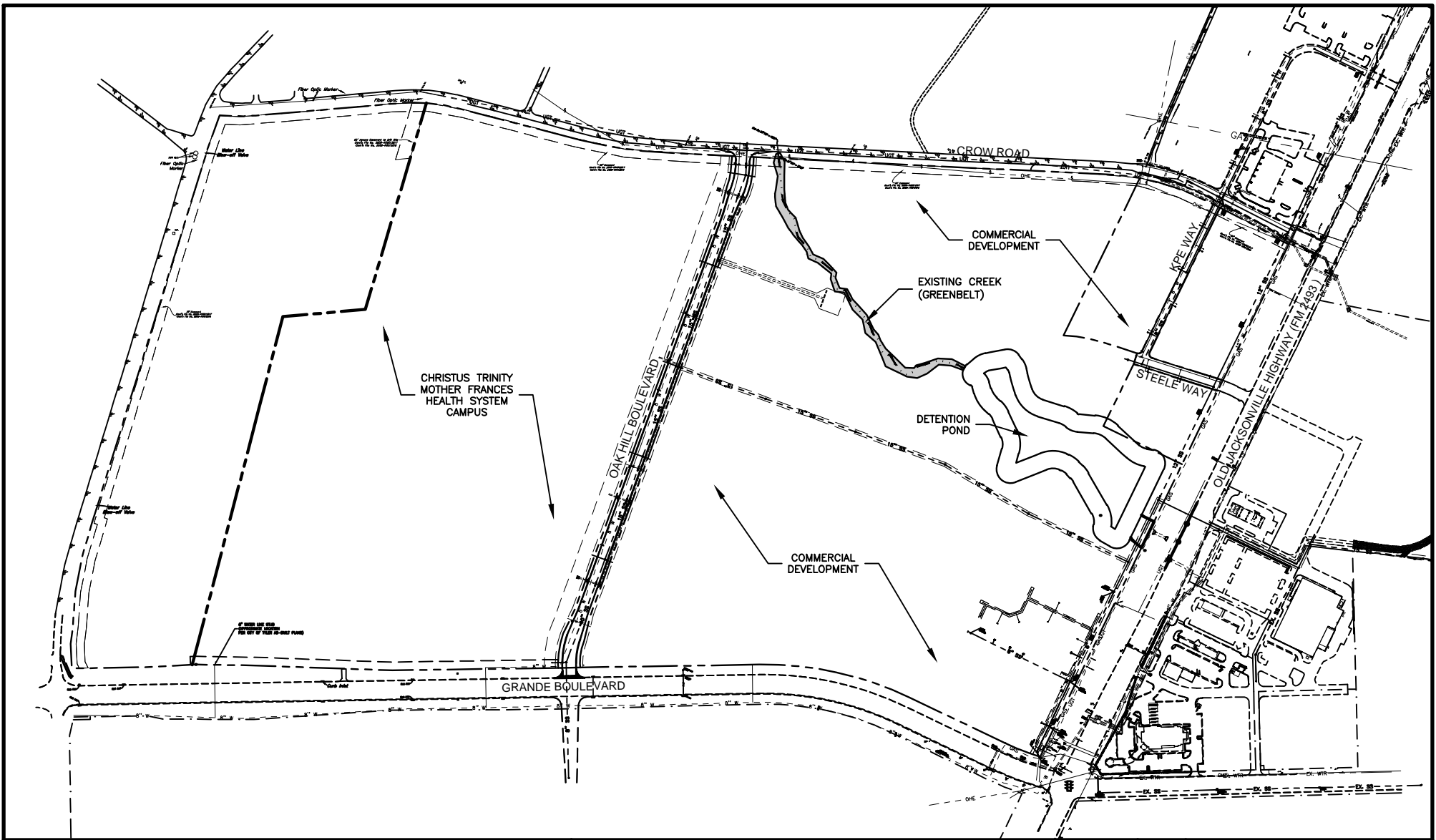


BENCHMARK DESIGN GROUP, LLC CIVIL / ENVIRONMENTAL ENGINEERS

P.O. BOX 7964 TYLER, TEXAS 75711
 2026 REPUBLIC DRIVE SUITE B TYLER TEXAS 75701
 (903) 534-5353 • FAX (903) 534-5352
 FIRM NUMBER F-7814
www.benchmark-engineers.com



SCALE: 1" = 500'



WEST VILLAGE TYLER, TEXAS

EXHIBIT 4 - SITE PLAN

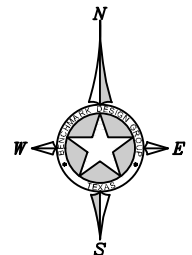
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