



November 16, 2021

Administrative Exception/Variance Request Denial Appeal  
Michael Shannon, P.E., C.B.O.  
Development Services Director  
City of San Antonio  
1901 S. Alamo  
San Antonio, TX 78204

RE: **SAT 14 Data Center**  
**Project #: 21-39801977**  
UDC Section 35-523  
Environmental Variance Denial Appeal

Dear Mr. Shannon,

This letter is to appeal the denial of our variance request to UDC Section 35-523. Our variance is requesting consideration for an administrative exception to preserve fewer than the 20% minimum existing trees as stated in 35-523, Table 523-1A "Mitigation Maximum". The denial of our request stated that granting the requested variance was not in the "public interest" and did not meet "the spirit of the landscape preservation ordinance".

### **Background**

The owner purchased this site in January of 2021 after an extended due diligence project. Over the course of this due diligence work a site layout was developed and City of San Antonio staff were consulted in trying to identify any significant challenges to developing the originally proposed layout. An e-mail from the design team to the assistant City arborist on December 7, 2020 inquired if there were frequently issues with tree mitigation requests delaying the issue of a permit and the response from the City was generally these requests only held up permitting if the contractor did not follow the approved plans. On July 13th, 2021 the full construction drawings were submitted for permit, and on August 12th, 2021 a partial permit was released by the City that would allow for tree removal from the site. After this partial permit was released the owner signed a contract with a contractor to begin construction on the site. On September 27<sup>th</sup>, after this contract was in place, the City informed the design team that the previous permit was being rescinded on the grounds that a tree variance request needed to be submitted prior to approval. The timing of these events has created an undue hardship on the owner who has been forced to pay delay fees to the contractor because of an apparent error on the part of City staff. In addition, from October 15<sup>th</sup> when the initial AEVR was submitted, until November 4<sup>th</sup>, the design team made numerous design changes at the request of City staff with the understanding that the AEVR could be approved if specific conditions were met. On October 25<sup>th</sup>, the design team received an e-mail from Assistance City Arborist saying the AEVR would be accepted and requested some minor modifications to the AEVR letter. On October 29<sup>th</sup> the design team received an e-mail from the City Arborist stating that there were additional revisions that could be made to the plans to make them more acceptable to the City.

Finally, after further design modifications the design team received a denial of the variance request on November 4th. Because of this direction the owner was forced to pay an additional three weeks of delay fees to the contractor, imposing even more significant hardships. In addition to the timeline above, the project parcel is an irregularly shaped lot with existing elevation changes of more than 70' feet vertically across the lot. Both of these factors create inherent hardships for the owner in developing this parcel.

## **Appeal**

We have attached to this letter as Exhibit A a copy of the original AEVR and as Exhibit B a timeline of communication with the City of San Antonio showing early permit approvals that were later rescinded and communication indicating the original AEVR was accepted and then subsequently rejected. We have listed numerous reasons below why we believe the approval of this development as previously submitted is in fact in the public interest and meets the spirit of the landscape ordinance. We have framed the responses below using excerpts from the statement of purpose of landscape and tree preservation requirements of the City of San Antonio UDC.

- *Safeguard and enhance property values and protect public and private investment.* – Because this site is zoned industrial, the City has pre-authorized it's development for an industrial use. With that in mind, the proposed data center development is by far the best industrial use available to enhance property values while protecting private investment. The data center is an incredibly clean industrial use with screening and noise prevention measures that will mitigate impacts to the adjacent neighborhood. There will be no adverse smells or visual pollution, and the owner as a company is dedicated to being a good neighbor, which does not always describe industrial developers. While there will be some truck traffic associated with the site, it is not for material storage and shipping so there will not be a constant stream of loud vehicles accessing the site. The current owner has invested millions of dollars in multiple data center sites around the City of San Antonio and has proven to be both a positive contributor in the community and an important source of jobs. The presence of a desirable employer hiring skilled laborers adjacent to residential areas should be expected to enhance property values in the area in a way that most other industrial uses would not. Denying the variance request for this site will impose a hardship on the owner that could potentially make the project unviable due to their need for a required density of equipment.

- *Reduce the negative environmental effects of development while protecting and enhancing the value of developed properties and the surrounding area.* – The owner developing this property will certainly enhance the value of developed properties in the area and reduce the negative impact of any negative environmental effects of the development. In alignment with the tree ordinance the owner is proposing to pay more than \$1,400,000 in tree mitigation fees to the City for planting new trees to replace those removed. While many existing trees will be removed, the quality of canopy trees on the site will actually be improved by the more than 830 new trees that are planted, considering many of the existing trees are of a poor quality. See below pictures of existing trees on the site:



Denying this variance request will hinder the planting of new quality canopy trees that will be better maintained and positioned to grow and flourish in favor of protecting trees of a low quality in addition to lowering the mitigation fees paid by the owner to the City of San Antonio.

- *Reduce soil erosion and increase infiltration in permeable land areas essential to stormwater management and aquifer recharge.* – The existing site experiences significant erosion with many areas showing exposed limestone with no topsoil, ultimately preventing infiltration of water on the site. The proposed project will actually help to mitigate erosion by stabilizing some areas with pavement, and providing dense, durable landscaping in green spaces around the site with adequate topsoil depths to allow for some infiltration. At-grade flow paths that carry eroded soils will be reduced and storm water volume will be captured in detention ponds. Denying this variance request could limit the ability of the project to enhance the stabilization of soil on site and reduce erosion.

- *Screen unsightly equipment or materials from the view of persons on public streets or adjoining properties and buffering from uncomplimentary land uses.* - As proposed, the project provides total new canopy coverage of 37%, exceeding the minimum requirement of 25%. In an effort to buffer the project from the residential neighborhood to the west, the majority of new tree plantings are proposed between the western property line and the buildings, providing substantial visual and sound buffer between the buildings and residential areas. These planting areas greatly expand upon required buffering areas in these locations. Denying this variance request would create a hardship on the owner that could limit their ability to provide the new canopy coverage due to space constraints on the site.

- *Encourage proper selection, installation, and maintenance of plant materials that result in the conservation of natural resources, including water.* - The project proposed to

limit potable water use over the life of the project by not including permanent irrigation for trees outside of buffering areas. In lieu of irrigation, the project includes a requirement for a three-year maintenance plan to water and establish new plantings for successful growth. This plan both meets the spirit of the tree preservation requirements by responsibly managing natural resources while also properly maintaining the proposed trees.

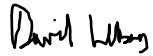
- *Maintain and increase property values by requiring site appropriate landscaping to be incorporated into development that is designed and installed by a qualified landscape professional.* - The existing tree canopy is primarily a mix of small to medium live oaks, cedar elm, and ash juniper. The proposed planting strategy will greatly increase the site's biodiversity. In total, we are introducing five additional shade tree species, eight new small tree species, and a variety of shrub plantings to the site, all of which are native and adapted species on the City's recommended species list and which will provide new habitat opportunities and long-term resilience for the site planting and surrounding area. Not granting this variance request would reduce the available space for this additional planting and prevent the positive additions noted.

- *Promote walkable, pedestrian-scale streetscapes, traditional neighborhoods, and compact centers by exempting uses which relate to each other functionally and visually from certain requirements of this section.* – The proposed development will provide new and improved bike and pedestrian shared use paths along the Wiseman Boulevard street frontage. Not granting this variance request could impact the owner's ability to develop this site and provide the positive additions noted above to the City's mobility infrastructure.

### **Summary**

For the reasons stated above approving the requested variance to the City of San Antonio tree preservation requirements both alleviates hardships the owner faces in developing this site and is in fact in the public interest and meets the spirit of the tree preservation and landscaping ordinance in a more meaningful way than simple quotas for preserving existing canopy. As outlined above both the shape of the parcel and existing topography create inherent hardships to developing this site. In addition, the more than \$1,400,000 the owner will pay in mitigation fees to the City combined with the obvious lack of quality and health of the existing vegetation on the site and the ability of the proposed design to increase biodiversity and create a sustainable canopy that enhances the aesthetics of the landscaping adjacent to developed areas around the site should all be considered in the granting of this variance request. Prior to the rejection of our initial variance request all previous correspondence and interactions with City of San Antonio staff led the owner to believe that there was a high probability this variance request would be accepted and multiple changes to the design have already been incorporated based on feedback received from the City. Throughout this process we have found the development services staff responsive and helpful in their advice and direction. We appreciate your consideration and look forward to your response.

**WALTER P. MOORE AND ASSOCIATES, INC.**

A handwritten signature in black ink, appearing to read "David Lundberg".

David Lundberg, P.E.  
Senior Engineer

Attachments: Exhibit A – AEVR Documentation  
Exhibit B – Tree Variance and Permitting Sequence