

# Texas Department of Transportation

P.O. BOX 1386 • HOUSTON, TEXAS 77251-1386 • (713) 802-5000

April 13, 2011

Multiple Use Agreements  
FM 1489 and FM 1093 at Brazos River  
Canoe and Kayak Launch  
Fort Bend County

CONTACT: DOM

The Honorable Robert E. Hebert  
County Judge, Fort Bend County  
301 Jackson Street, Suite 719  
Richmond, Texas 77469

Dear Judge Hebert:

Attached please find two executed copies of the above-referenced agreements for your use. Please disregard sign design as indicated on Exhibit C. Signs must be constructed and installed as per the attached sign detail layout; this sign detail layout will become part of these agreements.

The traffic control plan approval should be obtained at least two weeks in advance of the scheduled work date. Please coordinate all work for the referenced agreement, including the traffic control plan, through Mr. James V. Hunt, P.E., Area Engineer, at (281) 238-7900, at least 48 hours prior to beginning any work.

Please contact Mr. Leonard E. Polk, P.E., Transportation Engineering Supervisor, at (713) 802-5554, if you should have any questions.

Sincerely,

Delvin L. Dennis, P.E.  
District Engineer  
Houston District

cc: Mr. James V. Hunt, P.E., w/attachments  
Mr. Leonard E. Polk, P.E.



THE TEXAS PLAN  
REDUCE CONGESTION • ENHANCE SAFETY • EXPAND ECONOMIC OPPORTUNITY • IMPROVE AIR QUALITY  
PRESERVE THE VALUE OF TRANSPORTATION ASSETS

An Equal Opportunity Employer



## MULTIPLE USE AGREEMENT

STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT made by the State of Texas by and between the Texas Department of Transportation, hereinafter referred to as "State", party of the first part, and Fort Bend County, Texas, hereinafter called County, party of the second part, is to become effective when fully executed by both parties.

### WITNESSETH

WHEREAS, on the 27 day of April, 2010, the governing body for the County, entered into Resolution/Ordinance No. See Attached hereinafter identified by reference, authorizing the County's participation in this agreement with the State; and

WHEREAS, the County has requested the State to permit the construction, maintenance and operation of a public Canoe & Kayak Launch on the highway right of way, (General description of area) being located on the east bank of the Brazos River at on the north side of its intersection with Texas FM 1093 shown graphically by the preliminary conceptual site plan in Exhibit "A" and being more specifically described by metes and bounds of Exhibit "B", which are attached and made a part hereof; and

WHEREAS, the State has indicated its willingness to approve the establishment of such facilities and other uses conditioned that the County will enter into agreements with the State for the purpose of determining the respective responsibilities of the County and the State with reference thereto, and conditioned that such uses are in the public interest and will not damage the highway facilities, impair safety, impede maintenance or in any way restrict the operation of the highway facility, all as determined from engineering and traffic investigations conducted by the State.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **1. DESIGN AND CONSTRUCTION**

The County \_\_\_\_\_ will prepare or provide for the construction plans for the facility, and will provide for the construction work as required by said plans at no cost to the State. Said plans shall include the design of the access control, necessary horizontal and vertical clearances for highway structures, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. They shall also delineate and define the construction responsibilities of both parties hereto. Completed plans will be submitted to State for review and approval and when approved shall be attached to the agreement and made a part thereof in all respects. Construction shall not commence until plans have been approved by the State. Any future revisions or additions shall be made after prior written approval of the State.

### **2. INSPECTION**

Ingress and egress shall be allowed at all times to such facility for Federal Highway Administration personnel and State Forces and equipment when highway maintenance operations are necessary, and for inspection purposes; and upon request, all parking or other activities for periods required for such operations will be prohibited.

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

### **3. PARKING REGULATIONS**

Parking regulations shall be established limiting parking to single unit motor vehicles of size and capacity no greater than prescribed for 1<sup>1</sup>/<sub>2</sub> ton trucks, such vehicles to conform in size and use to governing laws. Parking shall be permitted only in marked spaces.

Parking shall be prohibited when a security threat, as determined by TxDOT, exists.

#### **4. PROHIBITION/SIGNS**

Regulations shall be established prohibiting the parking of vehicles transporting flammable or explosive loads and prohibiting use of the area in any manner for peddling, advertising or other purposes not in keeping with the objective of a public facility. The erection of signs other than those required for proper use of the area will be prohibited. All signs shall be approved by the State prior to the actual erection.

#### **5. RESPONSIBILITIES**

Maintenance and operation of the facility shall be entirely the responsibility of the County \_\_\_\_\_ . Such responsibility shall not be transferred, assigned or conveyed to a third party without the advanced written approval of the State. Further, such responsibility shall include picking up trash, mowing and otherwise keeping the facility in a clean and sanitary condition, and surveillance by police patrol to eliminate the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the highway, nor shall the facility subject the highway to hazardous or unreasonably objectionable dripping, droppings or discharge of any kind, including rain or snow.

#### **6. FEES**

Any fees levied for use of the facilities in the area shall be nominal and no more than are sufficient to defray the cost of construction, maintenance and operations thereof, and shall be subject to State approval.

#### **7. TERMINATION UPON NOTICE**

This provision is expressly made subject to the rights herein granted to both parties to terminate this agreement upon notice, and upon the exercise of any such right by either party, all obligations herein to make improvements to said facility shall immediately cease and terminate.

#### **8. MODIFICATION/TERMINATION OF AGREEMENT**

If in the sole judgment of the State it is found at any future time that traffic conditions have so changed that the existence or use of the facility is impeding maintenance, damaging the highway facility, impairing safety or that the facility is not being properly operated, that it constitutes a nuisance, is abandoned, or if for any other reason it is the State's judgment that such facility is not in the public interest, this agreement under which the facility was constructed may be : (1) modified if corrective measures acceptable to both parties can be applied to eliminate the objectionable features of the facility; or (2) terminated and the use of the area as proposed herein discontinued.

## 9. PROHIBITION OF STORAGE OF FLAMMABLE MATERIALS

All structures located or constructed within the area covered by the agreement shall be fire resistant. The storage of flammable, explosive or hazardous materials is prohibited. Operations deemed to be a potential fire hazard shall be subject to regulation by the State.

## 10. RESTORATION OF AREA

The \_\_\_\_\_ County \_\_\_\_\_ shall provide written notification to the State that such facility will be discontinued for the purpose defined herein. The \_\_\_\_\_ County \_\_\_\_\_ shall, within thirty (30) days from the date of said notification, clear the area of all facilities that were its construction responsibility under this agreement and restore the area to a condition satisfactory to the State.

## 11. PREVIOUS AGREEMENTS

It is understood that this agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the parties hereto.

## 12. INDEMNIFICATION

The \_\_\_\_\_ County \_\_\_\_\_ acknowledges that it is not an agent, servant or employee of the State, and that it is responsible for its own acts and deeds and for those of its agents or employees during the performance of contract work.

Neither party hereto intends to waive, relinquish, limit or condition its right to avoid any such liability by claiming its governmental immunity.

When notified by the State to do so, the other party hereto shall within thirty (30) days from receipt of the State's written notification pay the State for the full cost of repairing any damages to the highway facility which may result from its construction, maintenance or operation of the facility, and shall promptly reimburse the State for costs of construction and/or repair work made necessary by reason of such damages.

Nothing in this agreement shall be construed as creating any liability in favor of any third party against the State and the \_\_\_\_\_ County \_\_\_\_\_. Additionally, this agreement shall not ever be construed as relieving any third party from any liability against the State and the \_\_\_\_\_ County \_\_\_\_\_, but the \_\_\_\_\_ County \_\_\_\_\_, as allowed by law \_\_\_\_\_ shall become fully subrogated to the State and shall be entitled to maintain any action over and against the third party which may be liable for having caused the \_\_\_\_\_ County \_\_\_\_\_ to pay or disburse any sum of money hereunder.

### 13. INSURANCE

County \_\_\_\_\_ shall provide necessary safeguards to protect the public on State maintained highways including adequate insurance for payment of any damages which might result during the construction, maintenance and operation of the facility occupying such airspace or thereafter, and to save the State harmless from damages, to the extent of said insurance coverage and insofar as it can legally do so. Prior to beginning work on the State's right of way, the \_\_\_\_\_ County \_\_\_\_\_'s construction contractor shall submit to the State a completed insurance form (TxDOT Form No. 1560) and shall maintain the required coverage during the construction of the facility.

### 14. USE OF RIGHT OF WAY

It is understood that the State by execution of this agreement does not impair or relinquish the State's right to use such land for highway purposes when it is required for the construction or re-construction of the traffic facility for which it was acquired, nor shall use of the land under such agreement ever be construed as abandonment by the State of such land acquired for highway purposes, and the State does not purport to grant any interest in the land described herein but merely consents to such use to the extent its authority and title permits.

### 15. ADDITIONAL CONSENT REQUIRED

The State asserts only that it has sufficient title for highway purposes. The County \_\_\_\_\_ shall be responsible for obtaining such additional consent, permits or agreement as may be necessary due to this agreement. This includes, but is not limited to, appropriate permits and clearances for environmental, ADA and public utilities.

### 16. FHWA ADDITIONAL REQUIREMENTS

If the Facility is located on the Federal-Aid Highway System, "ATTACHMENT A", which states additional requirements as set forth in the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710, shall be attached to and become a part of this agreement.

### 17. CIVIL RIGHTS ASSURANCES

The \_\_\_\_\_ County \_\_\_\_\_, for itself, its personal representatives, successors and interests and assigns, as part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no persons, on the grounds of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facility; (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, age, national origin, religion or disabling condition, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that the

County \_\_\_\_\_ shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-Assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That if in the event of any breach of the above non-discrimination covenants, the State shall have the right to terminate the agreement and reenter and repossess said land and the facilities thereon, and hold the same as if said agreement had never been made or issued.

#### 18. AMENDMENTS

Any changes in the time frame, character or responsibilities of the parties hereto shall be enacted by a written amendment executed by both parties hereto.

#### 19. LEGAL CONSTRUCTION

In case one or more of the provisions contained in this agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this agreement.

#### 20. NOTICES

All notices required under this agreement shall be mailed or hand delivered to the following respective addresses:

STATE (Mailing Address)	(Name of other party) (Mailing Address)
Texas Department of Transportation	Fort Bend County, Texas
Maintenance Division	Attn: Robert Hebert, County Judge
125 East 11th Street	301 Jackson St., Suite 719
Austin, Texas 78701-2483	Richmond, TX 77469

#### 21. WARRANTS

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party represented.

List of Attached Exhibits:

- Exhibit A - General Layout
- Exhibit B - Metes and Bounds Description
- Exhibit C - Approved Construction Plans
- Exhibit D - Certificate of Insurance (TxDOT Form 1560)
- Exhibit E - Attachment A (FHWA Additional Requirements)



IN WITNESS WHEREOF, the parties have hereunto affixed their signature, the

County on the 27th day of April,  
2010, and the State on the 31st day of March, 2010.

STATE OF TEXAS

Executed and approved for the Texas

Transportation Commission for the purpose and  
effect of activating and/or carrying out the orders,  
and established policies or work programs  
heretofore approved and authorized by the Texas  
Transportation Commission.

Fort Bend County, Texas  
(Name of other party)  
By: Robert Hebert  
County Judge  
Title

Robert Hebert /

Printed Name

4-27-2010

Date

By: Julius B. J. P.E.  
Director, Maintenance Division

Toribio Garza, Jr., P.E.  
Printed Name

March 31, 2011  
Date

APPROVAL RECOMMENDED:

Delvin Dennis  
District Engineer

Delvin Dennis

Printed Name

3/7/11

Date



April 27, 2010

*See agenda item #20 for canoe launch sites  
on FM 1093 & FM 1489. JEP/h*

Approved

MINUTES

BE IT REMEMBERED, That on this 27th DAY of APRIL, 2010, Commissioners Court of Fort Bend County, Texas, met at a regular meeting with the following present:

ROBERT E. HEBERT

COUNTY JUDGE

RICHARD MORRISON

COMMISSIONER PRECINCT 1

ANDY MEYERS

COMMISSIONER PRECINCT 3

JAMES PATTERSON

COMMISSIONER PRECINCT 4

SHERRY FISK for DIANNE WILSON

COUNTY CLERK

Commissioner Prestage absent.

When the following were heard and the following orders were passed:

1. **Call to Order.**

Call to Order by Judge Hebert at 1:00 p.m.

2. **Invocation and Pledge of Allegiance by Commissioner Meyers.**

Invocation and Pledge of Allegiance by Commissioner Meyers.

3. **Approve minutes of regular meeting held on April 13, 2010.**

Moved by Commissioner Meyers Seconded by Commissioner Patterson

Duly put and unanimously carried (4-0), it is ordered to approve the minutes of regular meeting held on April 13, 2010.

Judge Hebert	Yes
Commissioner Morrison	Yes
Commissioner Prestage	absent
Commissioner Meyers	Yes
Commissioner Patterson	Yes

**19. TREASURER:**

**Approve Monthly Report submitted by County Treasurer for March, 2010, and authorize advertisement of Affidavit of same, in accordance with Local Government Code §114.026.**

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Moved by Commissioner Meyers Seconded by Commissioner Morrison

Duly put and unanimously carried (4-0), it is ordered to approve consent agenda items 6 - 19 with correction to 10B - University of Houston.

Judge Hebert	Yes
Commissioner Morrison	Yes
Commissioner Prestage	absent
Commissioner Meyers	Yes
Commissioner Patterson	Yes

**20. COUNTY JUDGE:**

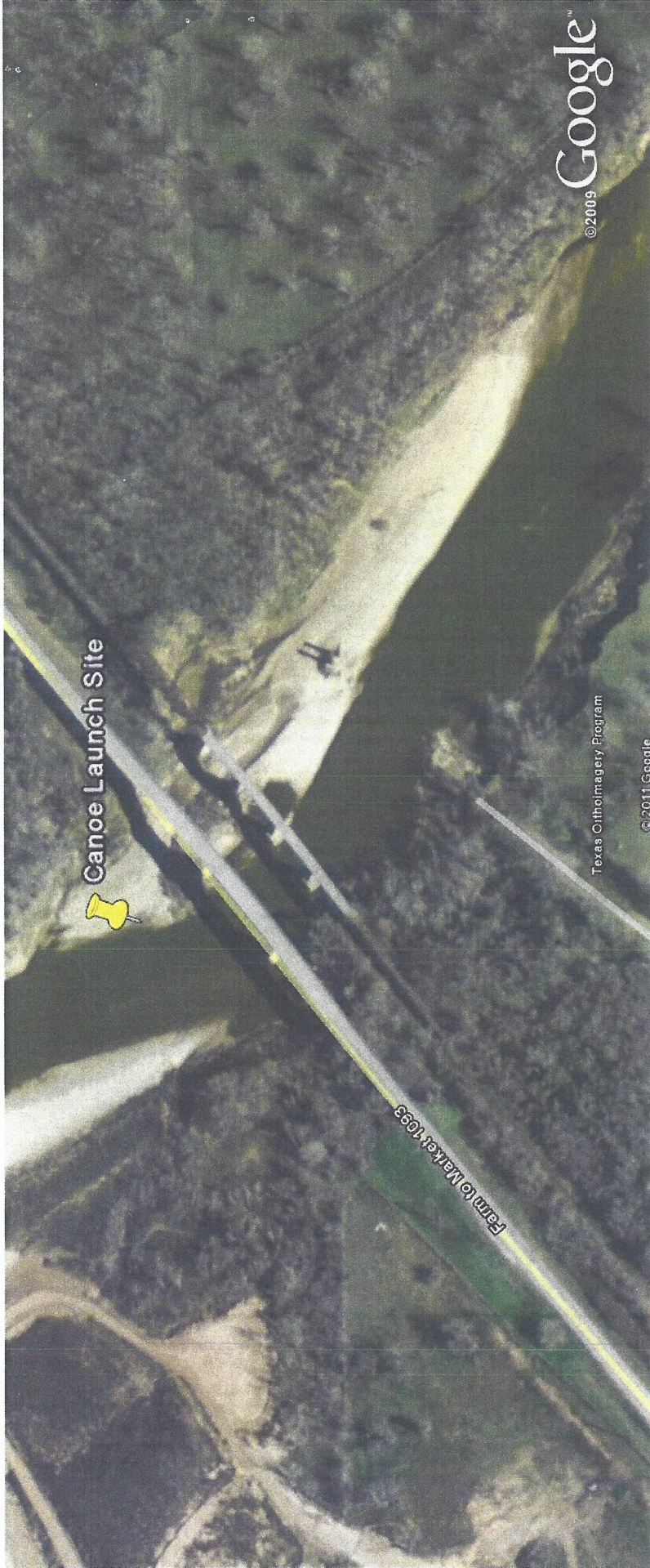
- A. Take all appropriate action on the Multiple Use Agreement between Fort Bend County and Texas Department of Transportation to permit the construction, maintenance and operation of a public canoe and kayak launch site on the highway right of way located on the east bank of the Brazos River at the north side of its intersection at Texas FM 1093.**
- B. Take all appropriate action on the Multiple Use Agreement between Fort Bend County and Texas Department of Transportation to permit the construction, maintenance and operation of a public canoe and kayak launch site on the highway right of way located on the east bank of the Brazos River at the north side of its intersection at Texas FM 1489.**

Moved by Commissioner Meyers Seconded by Commissioner Patterson

Duly put and unanimously carried (4-0), it is ordered to approve agenda items 20 A and B.

Judge Hebert	Yes
Commissioner Morrison	Yes
Commissioner Prestage	absent
Commissioner Meyers	Yes
Commissioner Patterson	Yes

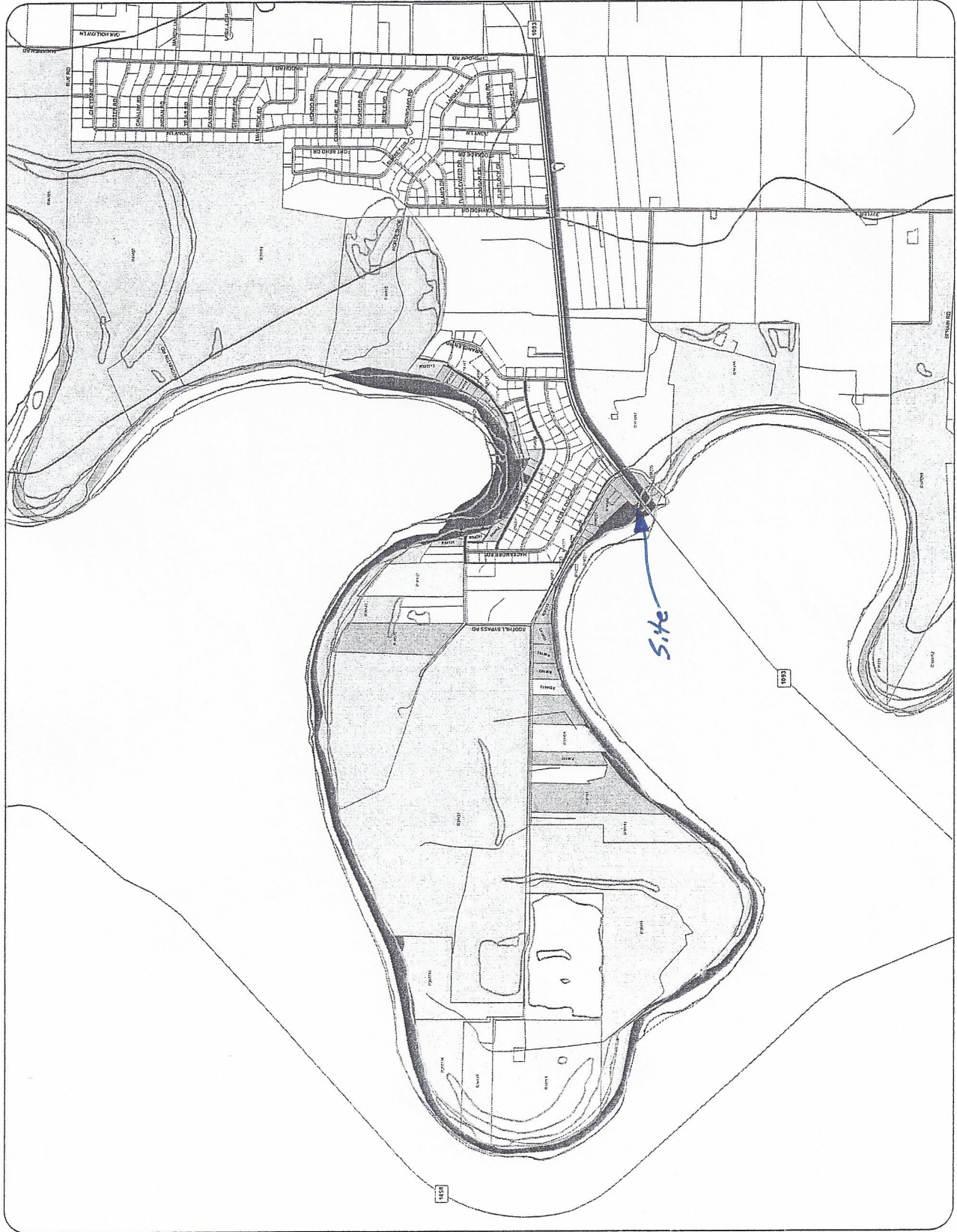




 Canoe Launch Site

*EXHIBIT A*





**Legend**

- ☐ Brazos River Area (NHD)
- ☐ FEMA Floodway
- ☐ Wetlands (NWI)
- ☐ Zero Property Value

**Parcel Type**

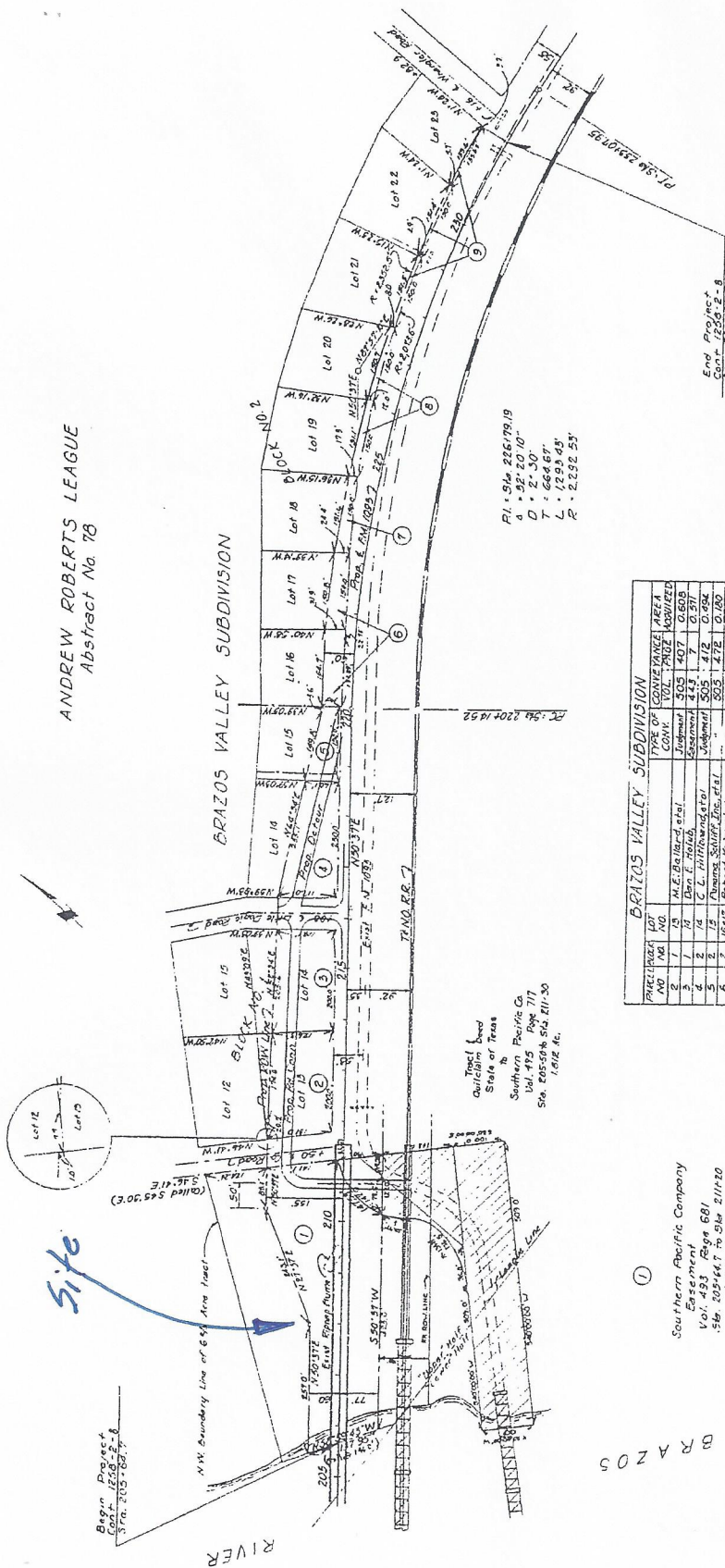
- ☐ Other
- ☐ Parcel
- ☐ Railroad ROW
- ☐ Reserve
- ☐ Road ROW

**Parcel Land Type (County)**

- ☐ Unknown
- ☐ Vacant Res Lots/tracts Rural Subdivision
- ☐ Commercial Miscellaneous
- ☐ Commercial Primary
- ☐ Commercial Secondary
- ☐ Fruit Orchard
- ☐ Farm Rotation (Irrigated)
- ☐ Grain/Cotton
- ☐ Grass Farm
- ☐ Horticulture
- ☐ Homestead
- ☐ Industrial Primary
- ☐ Improved Pasture
- ☐ Native Pasture
- ☐ Pecan Orchard
- ☐ Rural Acreage
- ☐ Residential Back Lot-no Frontage
- ☐ Residential Corner
- ☐ Residential Golf Course
- ☐ Residential Interior
- ☐ Residential Rear Lot/frontage
- ☐ Residential Waterfront
- ☐ Residential Cui-de-sac
- ☐ Tree Farm
- ☐ Timber Land
- ☐ Viticulture

7/20/2007

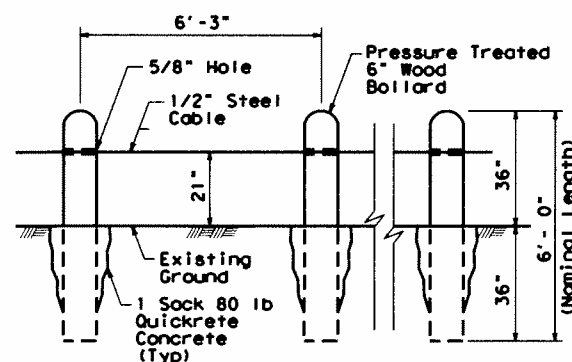
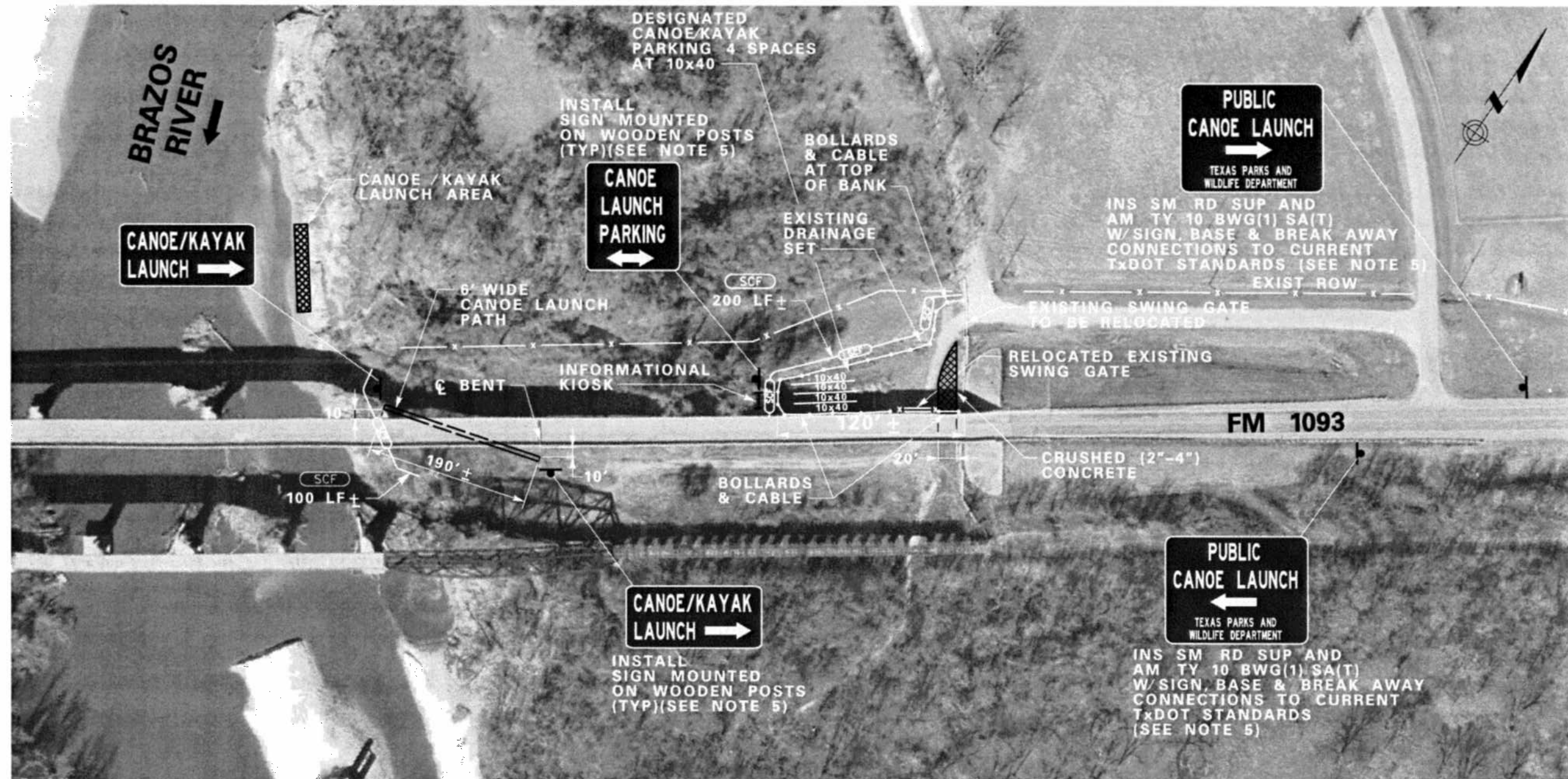
ANDREW ROBERTS LEAGUE  
Abstract No 78



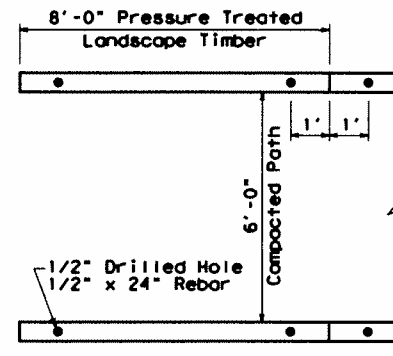
BRAZOS VALLEY SUBDIVISION			
Lot No.	Area (Acres)	Area (Sq. Rods)	Area (Acres)
1	1.551	108,000	1.551
2	1.551	108,000	1.551
3	1.551	108,000	1.551
4	1.551	108,000	1.551
5	1.551	108,000	1.551
6	1.551	108,000	1.551
7	1.551	108,000	1.551
8	1.551	108,000	1.551
9	1.551	108,000	1.551
10	1.551	108,000	1.551
11	1.551	108,000	1.551
12	1.551	108,000	1.551
13	1.551	108,000	1.551
14	1.551	108,000	1.551
15	1.551	108,000	1.551
16	1.551	108,000	1.551
17	1.551	108,000	1.551
18	1.551	108,000	1.551
19	1.551	108,000	1.551
20	1.551	108,000	1.551
21	1.551	108,000	1.551
22	1.551	108,000	1.551

EXHIBIT B

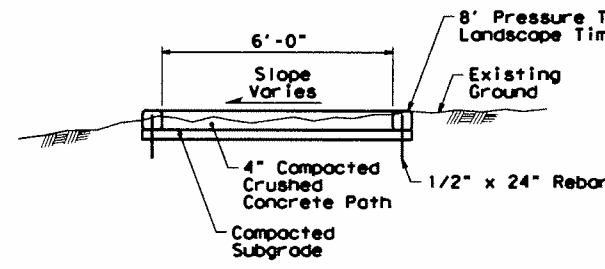




**BOLLARDS  
AND CABLE DETAIL**



**CANOE LAUNCH PATH  
PLAN**



**CANOE LAUNCH PATH  
SECTION DETAIL**

**NOTE:**

- CONTRACTOR SHALL VERIFY LOCATION OF UNDERGROUND UTILITY LINES AND SHALL NOTIFY THE FOLLOWING AGENCIES 48 HOURS PRIOR TO EXCAVATING NEAR EXISTING FACILITIES:  
A.) TEXAS ONE CALL SYSTEM AT 1-800-245-4545  
B.) LONE STAR NOTIFICATION CENTER AT 713-223-4567  
C.) TEXAS EXCAVATION SAFETY SYSTEM INC. AT 1-800-344-8377
- INSTALL SEDIMENT CONTROL FENCE PRIOR TO START OF WORK
- ALL SIGNS SHALL BE MADE TO CURRENT TxDOT SPECIFICATIONS.
- SEE SIGN DETAIL SHEET FOR SIGN DIMENSIONS
- LOCATION OF SIGNS TO BE DETERMINED IN FIELD.

**LEGEND**

- SIGN
- INFORMATIONAL KIOSK
- PATH TO LAUNCH
- LAUNCH AREA
- BOLLARD AND CABLE
- GATE
- SEDIMENT CONTROL FENCE

\* PORTABLE CONCRETE BARRIER  
MAY BE SUBSTITUTED

FOR REVIEW ONLY  
NOT FOR BIDDING,  
PERMITS OR  
CONSTRUCTION



FORT BEND COUNTY

**KBR**  
Engineered by KBR Technical Services, Inc.  
TEXAS REGISTERED ENGINEERING FIRM F-2397

FORT BEND COUNTY  
**BRAZOS RIVER TRAIL  
CANOE LAUNCH  
AT FM 1093**

**EXHIBIT C**



## **ATTACHMENT A**

Inasmuch as this project is on the Federal-Aid highway system, the following additional requirements as applicable with the Federal Highway Administration's Title 23, Code of Federal Regulations, § 710.

1. Any significant revision in the design or construction of the facility shall receive prior approval by the Texas Department of Transportation subject to concurrency by the FHWA.
2. Any change in the authorized use of airspace shall receive prior approval by the Texas Department of Transportation subject to concurrence by the FHWA.
3. The airspace shall not be transferred, assigned or conveyed to another party without prior Texas Department of Transportation approval subject to concurrence by the FHWA.
4. This agreement will be revocable in the event that the airspace facility ceases to be used or is abandoned.

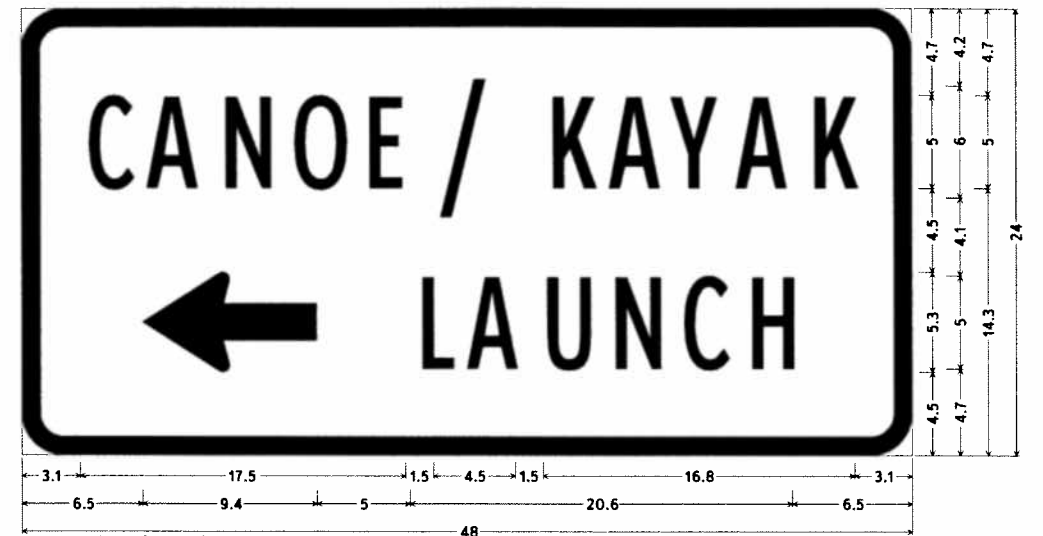
## **EXHIBIT E**



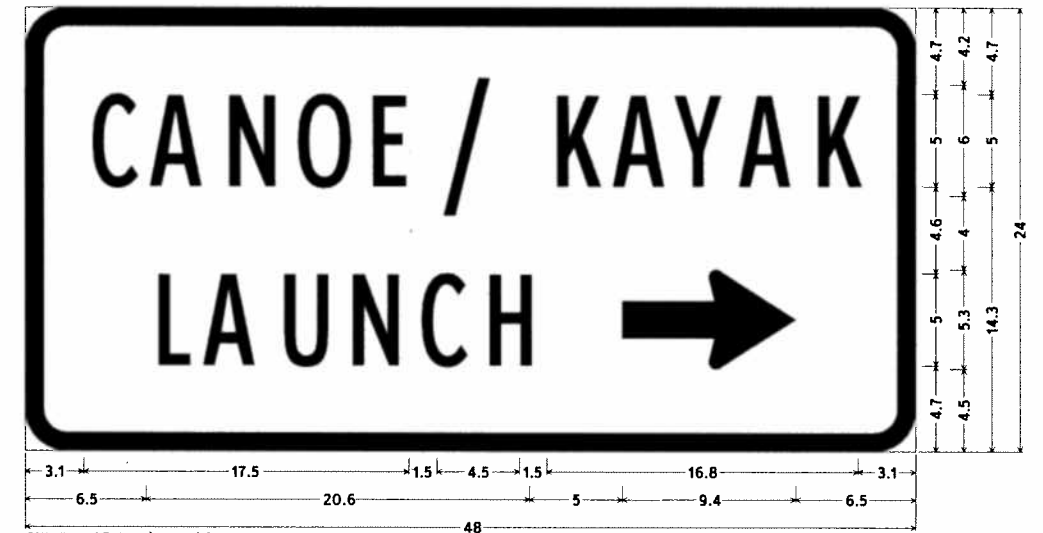
D7-5aL mod; 1.0" Border, White on Brown;  
[PUBLIC] D; [CANOE LAUNCH] C; Standard Arrow Custom 20.0" X 8.1" 180°; [TEXAS PARKS AND] D;  
[WILDLIFE DEPARTMENT] D;



CLP-L; 1.0" Border, White on Brown;  
[CANOE] C; [LAUNCH] C; [PARKING] C;  
Standard Arrow Custom 10.0" X 5.4" 180°



CKL-L; 1.0" Border, White on Brown;  
[CANOE] C; [/] C; [KAYAK] C; Standard Arrow Custom 9.4" X 5.4" 180°; [LAUNCH] C;



CKL-R; 1.0" Border, White on Brown;  
[CANOE] C; [/] C; [KAYAK] C; [LAUNCH] C; Standard Arrow Custom 9.4" X 5.4" 0°



D7-5aR mod; 1.0" Border, White on Brown;  
[PUBLIC] D; [CANOE LAUNCH] C; Standard Arrow Custom 20.0" X 8.1" 0°; [TEXAS PARKS AND] D;  
[WILDLIFE DEPARTMENT] D;



CLP-R; 1.0" Border, White on Brown;  
[CANOE] C; [LAUNCH] C; [PARKING] C;  
Standard Arrow Custom 10.0" X 5.4" 0°



CLP-L&R; 1.0" Border, White on Brown;  
[CANOE] C; [LAUNCH] C; [PARKING] C; Double Headed Arrow Custom - 16.0" 0°

FOR REVIEW ONLY NOT FOR BIDDING, PERMITS OR CONSTRUCTION
 FORT BEND COUNTY
<b>KBR</b> Engineered by KBR Technical Services, Inc. TEXAS REGISTERED ENGINEERING FIRM F-2397
FORT BEND COUNTY BRAZOS RIVER TRAIL CANOE LAUNCH SIGN DETAILS
SHEET 1 OF 1