



CITY OF DENTON 2009 ANNEXATION STRATEGY

The following report discusses the actions that led to the 2009 Annexation. Also discussed in this report are the annexation processes and requirements relative to: (1) a 3-year Annexation Plan; (2) an Inventory of Services and Facilities; (3) a 2½-year Service Plan; and (4) Development Agreements for land appraised for agricultural land-use.

BACKGROUND:

In 1999 when the Denton Plan was adopted, the City's land area was 39,695 acres. To accommodate future population and development growth, the Denton Plan anticipates annexation of land within the City's ETJ. The anticipated required acreages and their associated land-uses are identified in the table below.

Anticipated Land-Uses	Required Acreages
Single-family development	15,000 acres
Multi-family development	1,200 acres
Industrial development	3,000 acres
Commercial development	3,200 acres
Institutional development	2,700 acres
Total	25,100 acres

The anticipated 25,100 additional acres is based on population projections and an average density of 2,250 people per square mile (640 acres). Per the Denton Plan, the minimum anticipated land area required to accommodate future population and development is 64,795 acres (39,695+25,100). Current land area within the City is 57,257 acres, which is 7,538 acres below the

anticipated minimum stated in the Denton Plan.

Element Two of the City's Growth Management Strategies within the Denton Plan (Pages 23) states: *"Adopt an aggressive annexation policy in order to manage the density and quality of growth within the current ETJ and maintain the city's existing certificate of convenience and necessity (CCN)"*

The City's annexation policy plan, adopted in June 1993 states that: *"Annexation is considered when a property is located within the designated urbanizing area; is expected to accommodate urban growth in the next twenty years; and if the annexation is contiguous to existing city limits, city roads and rights-of-way."*

In addition to achieving the vision of the Denton Plan, the areas that will be annexed will achieve the following goals:

- Protect the north Interstate 35 corridor;
- Protect the future west Loop 288 corridor;
- Manage growth in the City's CCN;

- Manage land-use in probable growth areas;
- Create a logical contiguous City of Denton boundary;
- Provide future growth areas as recommended by the Denton Plan; and,
- Reduce the pockets of unincorporated areas (donut holes) within the existing city limits.

The factors used to determine what areas to annex include but are not limited to the following:

- Physical features such as creeks, railroads, roadways and other physical or natural boundaries;
- Property configuration;
- Proximity to current City boundary;
- The City's ability to provide adequate public services (Fire, Police, Water, Wastewater, etc.), and proximity to the City's CCN);
- Areas within the City's CIP;
- Extent of recent development activities;
- Number of occupied parcels;
- Recent voluntary annexation trends; and,
- Location and intensity of gas wells.

To accomplish the above, the City contracted with Freese and Nichols, Inc. (FNI) to perform a growth management study. The initial study covered approximately 48,000 acres within the City's Extra Territorial Jurisdiction (ETJ), and was later narrowed down to 22 potential areas containing approximately 12,357.76 acres. Five (5) of the potential 22 areas are primarily located in the north western quadrant of the City, totaling approximately 7,855 acres. Please see Exhibit 1. The other seventeen (17) are unincorporated ETJ pockets (donut holes) that are located within the body of the City's corporate limits containing approximately 4,502.68 acres. Please see Exhibit 2. Further studies revealed that three (3) of donut holes are encumbered with restrictive covenants and are not immediately eligible for annexation. As such, they were eliminated from further studies and consideration. These 3 areas are colored red in Exhibit 2 and contain 716 acres. The City Council then directed staff to develop an annexation priority ranking of the remaining 19 areas containing approximately 11,641.68 acres.

During the initial ranking process, staff formulated a system that was geared predominantly towards the cost of providing city services to the areas. However, during a June 19, 2009 meeting among City staff and a representative from FNI, it was determined that other important attributes in addition to the cost of providing City services should be factored into the ranking methodology. As such, staff reverted to the goals that were identified during the March 10, 2009 City Council work session for guidance. The goals identified are as follows:

- ☐ Protect the North Interstate 35 corridor;
- ☐ Protect the future "West Loop 288" corridor;

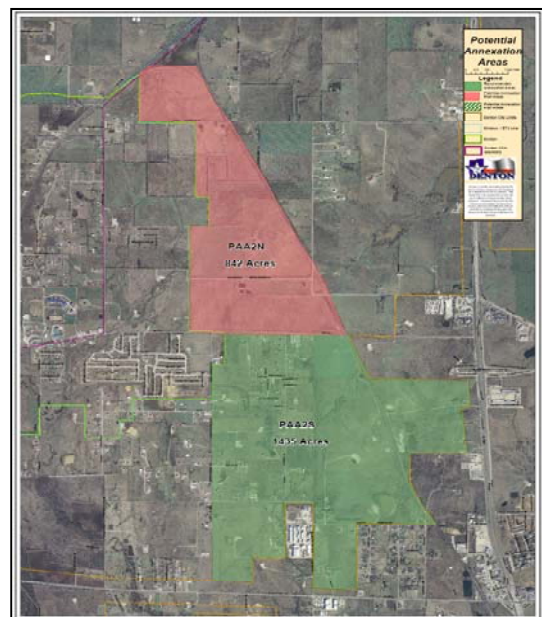
- ☐ Manage growth in the city's CCN;
- ☐ Manage land-uses/types of development;
- ☐ Create a logical and contiguous city boundary; and,
- ☐ Provide future growth areas as recommended in the Denton Plan.

Using the above goals as a guide, it was determined that the following criteria would be factored into the revised ranking methodology:

1. **Cost to provide services** – FNI utilized the data obtained from several City departments (Fire, Police, Water, Waste Water, Parks, Solid Waste, Code Enforcement) to compile a ranking for each area;
2. **Corridor protection** – Corridor protection (north Interstate 35, the future “West Loop 288”) was the primary factor in FNI’s rankings for this item, as the areas had previously been vetted for Certificate of Convenience and Necessity (CCN) issues;
3. **Growth management** – FNI reviewed the Annexation Strategies outlined in the Denton Plan and provided a score for each area based on conformance with the approaches identified; and,
4. **Create a logical and contiguous city boundary** – All of the proposed growth areas are contiguous to the current city boundary. FNI utilized this item to distinguish the growth areas from the in-fill properties.

The above criteria were assigned a score of 0-5. Each potential annexation area was then ranked by their total score, ranging from 0 to 20. The lower score means that the area is considered to be a higher priority for annexation. The areas were color coded to reflect their priority ranking. Green indicates a high priority ranking, while yellow and red indicate medium and low priority ranking respectively. Please see Exhibit 3

Upon further review of the priority ranking results, staff was not completely satisfied that the previously mentioned goals were fully met. Specifically, the area in which the future West Loop 288 is proposed to be located was ranked low. Therefore, on August 26, 2009 staff met and determined that PAA2 should be divided into two (2) sub-areas (PAA2 North & PAA2 South). Each sub-area was then ranked separately with PAA2N retaining a low ranking while PAA2S was ranked high. PAA2S was ranked high to provide growth management protections and land-use control along proposed West Loop 288. The dividing line of PAA2 was set along Hwy. 1173, and is illustrated in the insert to the right.



On September 1, 2009, staff presented the final results of the annexation priority ranking to the City Council via a work session. During the work session, staff recommended the annexation of 17 areas totaling approximately 7,869 acres of land within the City of Denton's Extra Territorial Jurisdiction (ETJ). The areas staff recommended include all the "donut holes" (except those with annexation agreements – 15, 16, & 17), PAA2S, PAA3 and PAA4. It was further determined during the work session that PAA1 should also be annexed due to its close proximity to the Denton Municipal Airport. PAA1 contains approximately 1,165 acres, thus the total acreage being considered for annexation is approximately 9,035 acres contained in 18 areas. These areas are illustrated in Exhibit 4. Please note that all the areas shown in Exhibit 4 are being considered for annexation, notwithstanding them being colored red. Red was chosen due to the better color contrast with the background map, as compared with green.

ANNEXATION IN TEXAS

The information from this point forward covers the annexation process in Texas. It is based primarily on Chapter 43 of the Tx.LGC.

ADOPTION OF AN ANNEXATION PLAN

Tx.LGC §43.052 establishes the standards by which municipalities must abide with regards to annexation. The following is a description of the steps that must be followed during the annexation procedure.

1. *Adoption of an Annexation Plan:*

Per Tx.LGC §43.052, a home-rule municipality, such as the City of Denton (the City) must adopt an Annexation Plan. The purpose of the 3-Year Annexation Plan is to clearly state the City's intent with respect to future involuntary annexation. The Annexation Plan must identify all areas proposed for annexation and annexation of the area may not occur prior to the 3rd anniversary of the date the Annexation Plan is adopted or amended. *Id. at §43.052(c)*. The "three-year waiting period" is a misnomer, because the City must begin notice, hearing and negotiation procedures almost immediately after placing an area in the Annexation Plan.

Per Texas Local Government Code (Tx.LGC) §43.052, a home-rule municipality must adopt an Annexation Plan prior to annexation. The purpose of the Annexation Plan is to clearly state the City's intent with respect to future involuntary annexation. The Annexation Plan must identify all areas proposed for annexation, and annexation of the areas may not occur prior to the 3rd anniversary of the date the Annexation Plan is adopted or amended. *Id. at §43.052(c)*. Notwithstanding the prior mentioned, certain types of areas are exempt from inclusion in an Annexation Plan. Specific to the City's proposed annexation, an Annexation Plan is not required for any area proposed for annexation that contains fewer than 100 separate tracts of land on which one (1) or more residential dwellings are located on each tract. *Id. at §43.052(h)(1)*. Therefore, all the areas that are proposed for annexation are exempt from the Annexation Plan requirement except donut holes (DH) 7 and 12. Area DH 9 contains ninety-nine (99) separate tracts of land with one (1) or more residential dwellings. While DH 9 technically does not have

to be included in the Annexation Plan, it most likely will to avoid any future concern of impropriety. The DH areas that will be included in an Annexation Plan are illustrated in Exhibit 5. These areas are shown in red and white striping.

This specific exemption has been the subject of differing interpretation. As such, the Texas Attorney General rendered an opinion on September 3, 2009 stating that: "*We conclude that section 43.052(h)(1) of the Local Government Code does not require that a residence be located on each tract of the area proposed for annexation.*" Individual maps for DH 7, 9 and 12 are included as Exhibit 6, 7 & 8 respectively.

The sequence for annexation of areas that are exempt from the Annexation Plan can unfold as follows:

- (a) Preparation of the Service Plan;
- (b) Provide written notice to property owners, DISD, railroads and public and private entities, if required;
- (c) Notice of the hearings is published in the Denton Record-Chronicle and posted on the City's Internet website;
- (d) Public hearings are held on the proposed annexation at which all interested persons are heard;
- (e) The City Council meets and passes the annexation ordinance; and
- (f) Proper post-annexation preclearance and notice is completed.

3. *Amendments to the Annexation Plan:*

The City may add an area or areas to the Annexation Plan at any time. However, the area(s) may not be annexed until on or after the third (3rd) anniversary of the date the Annexation Plan was amended. *Id. at Tx.LGC §43.052(c)*. The City may also amend the Annexation Plan to remove an area proposed for annexation; however, if the area is removed before the 18th month after the month the area is included in the Annexation Plan, the City may not amend the Annexation Plan to include the affected area until one (1) year has passed since the area was removed from the Annexation Plan. Additionally, if the area is removed from the Annexation Plan during or after the 18th month after the month the area is included in the Annexation Plan, the City may not amend the Annexation Plan again to include the area until the second (2nd) anniversary of the date the City amended the Annexation Plan to remove the area. *Id at Tx.LGC §43.052(e)*.

One issue in particular has arisen in several cities. That question is whether land that is included by a city in an Annexation Plan, but that is not technically required to be in the plan, may be removed without incurring the time penalties in Tx.LGC §43.052. This may be of significance to the City's annexation process, since DH 9 only contains ninety-nine (99) separate tracts of land with one (1) or more residential dwellings, and technically is not required to be included in an Annexation Plan. At least one district court has held that the answer to that question is "yes," the area may be removed without incurring penalties.

In *Lago Santa Fe Property Owners' Association v. City of Santa Fe, Texas* (Cause No. 01-CV-0981), the city's motion for summary judgment in the District Court, 212th Judicial District, Galveston County, Texas, was granted in April of 2002, and the landowners did not appeal.

This suit was one of the first to involve a claim under the amended annexation provisions of Tx.LGC §43.052. The City of Santa Fe's annexation plan, which was passed and adopted on December 9, 1999, included the Lago Santa Fe subdivision. The city subsequently realized that the subdivision was exempt from the annexation plan requirement under Tx.LGC §43.052(h)(1) and that it was authorized to annex the area immediately. The city notified the landowners that they had been removed from the plan and that the city would annex them immediately.

The landowners petitioned the city to be placed back in the annexation plan and argued unsuccessfully that, while the city was authorized to remove them from the plan, the city would be bound by the waiting periods under Tx.LGC §43.052. The court rejected the landowners' argument and granted summary judgment in favor of the city. Thus, the question of whether land that was included by a city in an annexation plan, but that was not technically required to be in the plan, may be removed without incurring the time penalties in Tx.LGC §43.052, has been answered affirmatively by at least one state district court.

4. *Annexation Completion Deadlines and Restrictions:*

The annexation of the areas identified in the Annexation Plan must be completed before the 31st day after the third (3rd) anniversary of the date the area was included in the annexation plan. If the annexation is not completed within the prescribed period, the City may not annex the areas proposed for annexation before the fifth (5th) anniversary of the last day for completing an annexation.

WRITTEN NOTICE AND INTERNET POSTING REQUIREMENT:

1. *Written Notice Requirement:*

Prior to the 90th day after the date the City adopts or amends the Annexation Plan, the City shall give written notice to (1) each property owner in the affected area, as indicated by the appraisal records furnished by the appraisal district for each county in which the affected area is located; (2) each public entity, as defined by Tx.LGC §43.053, or private entity that provides services in the area proposed for annexation; and (3) each railroad company that serves the municipality and is on the municipality's tax roll if the company's right-of-way is in the area proposed for annexation. The notice shall state that the area has been included in or removed from the municipality's annexation plan.

A "public entity" includes a municipality, county, fire protection service provider, including a volunteer fire department, emergency medical services provider, including a volunteer emergency medical services provider, or a special district, as that term is defined by Tx.LGC §43.052. *Id. at Tx.LGC §43.053(a).*

The City must also provide the written notice to the Denton Independent School District (DISD) within the period prescribed for publishing of the first public hearing. The notice must include any financial impact on the district that may result from the annexation and the City's proposal to limit the effects of that financial impact. (*Id. at Tx.LGC§43.905*)

2. *Internet Posting Requirement:*

In addition to the above written notice requirement, since the City has an internet website, the City is required to: (1) post and maintain the posting of the Annexation Plan on the city's Internet website; (2) post and maintain the posting of any amendments to include all areas in the Annexation Plan until the date the areas are annexed; and (3) post and maintain the posting of any amendments to remove any areas from the Annexation Plan until the date the City may again include the area in the Annexation Plan.

INVENTORY OF SERVICES AND FACILITIES - TX.LGC § 43.053:

1. *Prepare an Inventory of Services and Facilities:*

Per Tx.LGC §43.053, the City of Denton must compile a comprehensive Inventory of Services and Facilities provided by public and private entities, directly or by contract, in each area proposed for annexation, after adopting or amending the Annexation Plan. The Inventory of Services and Facilities must include all services and facilities the City is required to provide or maintain following the annexation.

To accomplish this task, the City is required to request, in the notice required under Tx.LGC § 43.05.(1), the information necessary to complete the inventory from all public and private service providers. Additionally, the public and private service providers are required to submit the information requested by the City within 90 days of receipt of the request; however, the service provider and the City may agree to extend the period for providing the information. Should a provider fail to submit the necessary information within the 90 day period, the City is not required to include the information in the inventory. *Id. at Tx.LGC §43.053(c)*. The City may monitor the services provided and verify the information provided. *Id. at Tx.LGC §43.053(h)*.

This Inventory of Services and Facilities must be completed, and made available for public inspection, on or before the 60th day after the date the City receives the required information from service providers in the area. *Id. at Tx.LGC §43.053(g)*.

2. *Information required to be Included in the Inventory of Services:*

The information required in the Inventory of Services and Facilities shall be based on the services and facilities provided during the year preceding the date the City adopts the Annexation Plan or amended the Annexation Plan to include additional areas.

Per Tx.LGC 43.053(e), the information required to be provided by service providers, and included in the Inventory of Services and Facilities, must include the type of service provided, the method of service delivery, and the following information:

- (e) For utility facilities, roads, drainage structures and other infrastructure provided or maintained by public or private entities, the inventory must include:
 - (1) an engineer's report that describes the physical condition of all infrastructure elements in the area; and
 - (2) a summary of capital, operational and maintenance expenditures for that infrastructure.
- (f) For police, fire and emergency medical services provided by public or private entities, the inventory must include:
 - (1) the average dispatch and delivery time;
 - (2) a schedule of equipment including vehicles;
 - (3) a staffing schedule that discloses the certification and training levels of personnel; and
 - (4) a summary of operating and capital expenditures. Tx.LGC § 43.053(c),(e) and (f).

PREPARE A SERVICE PLAN:

1. Tx.LGC § 43.056 sets forth the requirements related to scheduling for the provision of municipal services. The City must complete a Service Plan for the areas included in the Annexation Plan before the first (1st) day of the 10th month after the month in which the Inventory of Services and Facilities is completed. *Id. at §43.056(a)*. The Service Plan must provide for "full municipal services" in the annexed area no later than two and one-half (2½) years after the effective date of the annexation unless:
 - (a) the City cannot reasonably provide certain services within that period; and
 - (b) the City proposes a schedule for providing the services that extends not longer than four and one-half (4½) years after the effective date of the annexation. *Id. at §43.056(b)*.

Tx.LGC §43.056(c) defines "full municipal services" as "services provided by the annexing municipality within its full-purpose boundaries, including water and wastewater services and excluding gas or electrical service."

2. ***Immediate Services:***

The City is required to provide the following services on the effective date of the annexation:

- (a) police protection;
- (b) fire protection;
- (c) emergency medical services;
- (d) solid waste collection, except as provided by subsection (o). Subsection (o) provides that a municipality is not required to provide collection service to a

person who continues to use the collection services of a privately owned collection service;

- (e) operation and maintenance of water and wastewater facilities in the annexed area that are not within the service area of another water or wastewater utility;
- (f) operation and maintenance of roads and streets, including road and street lighting;
- (g) operation and maintenance of parks; and
- (h) operation and maintenance of any other publicly owned facility, building or service.

3. *Acquisition and Construction of Capital Improvements:*

Per Tx.LGC §43.056(e), the Service Plan must provide that construction of capital improvements must be substantially completed within 2½ years; however, the Service Plan may be amended to extend this time if construction is proceeding with all deliberate speed. The acquisition or construction of the facilities may be accomplished by purchase, lease or other contract.

The construction of facilities shall be a continuous process and be completed as soon as reasonably possible. The requirement that capital improvements must be substantially complete within the period provided for in the service plan does not apply to a development project.

A Service Plan may not:

- (a) require the creation of another political subdivision;
- (b) require a landowner in the area to fund the capital improvements necessary to provide municipal services in a manner inconsistent with Chapter 395 unless otherwise agreed to by the landowner; or
- (c) provide services in the area in a manner that would have the effect of reducing by more than a negligible amount the level of fire and police protection and emergency medical services provided within the corporate boundaries of the municipality before annexation. *Id. at §43.056(f)*

Prior to the second (2nd) anniversary of date the area is included in the corporate boundaries of the City by annexation, the City may not prohibit the collection of solid waste in the area by a solid waste management provider, or impose a fee for the collection of solid waste on a person who continues to use the services of a privately owned solid waste management provider.

4. *Level of Services:*

The Service Plan may not provide for services in the annexed area that would reduce the level of fire, police and emergency medical services within the city. *Id. at Tx.LGC § 43.056(t)(3)*. Second, the service plan must provide the area with a level of services comparable to or superior to the level of services available in other parts of the City with land-uses and population densities similar to those reasonably contemplated or projected

in the area; however, if the area had a level of services equal to the services provided within the corporate boundaries of the City, the Service Plan must maintain that same level of services. Finally, if the annexed area had a level of services for maintaining the infrastructure of the area superior to the level of services provided within the City, the Service Plan must maintain the infrastructure of the annexed area at a level of services that is equal or superior to the level of services previously enjoyed in the annexed area. *Id. at Tx.LGC § 43.056(g)*.

5. *Timing of Extending Utilities:*

Tx.LGC §43.056 does not require that the City provide a "uniform level of full municipal services" to each area of the municipality if different characteristics of topography, land use and population density constitute a sufficient basis for providing different levels of service. *Id. at §43.056(m)*. The analogous subsection in the prior law was the basis of a Texas Attorney General's Opinion, which stated that differences in the levels of services provided in annexed areas and existing areas of the city must be based on differences in topography, land use, and population density. Please see Exhibit 5.

It is therefore apparent that the City is not required to extend its services to a newly annexed territory prior to the extension of services to like areas; however, to the extent that services in the annexed area are equal to or superior to those provided in the City boundaries (*Id. at §43.056(g)*) applies and the City must maintain that level of services.

6. *Length of Validity of Service Plan:*

A Service Plan is effective for ten (10) years. A person residing or owning land in an annexed area in a municipality with a population of less than 1.6 million such as the City of Denton, may enforce the Service Plan by applying for a *writ of mandamus* no later than the second (2nd) anniversary of the date the person knew or should have known the municipality was not complying with the Service Plan. Upon application for a *writ of mandamus*, the City has the burden of proving the services have been provided in accordance with the Service Plan. *Id. at Tx.LGC §43.056(1)*.

7. *Negotiations for Services:*

After holding the hearings as provided by Section 43.0561, the City and the property owners of the area proposed for annexation shall negotiate for the provision of services to the area after annexation or for the provision of services to the area in lieu of annexation. For purposes of these negotiations, the Commissioner's Court of Denton County shall select five (5) representatives to negotiate with the City. *Id. at Tx.LGC §43.0562(a)(1) & (b)*.

ARBITRATION

Per Tx.LGC §43.0654, if the City of Denton and the representatives of the area proposed for annexation cannot reach an agreement for the provision of services, either party by majority decision may request the appointment of an arbitrator to resolve the Service Plan issues in dispute. The request must be made in writing to the other party before the 60th day after the date

the Service Plan is completed. The municipality may not annex the area during the pendency of the arbitration proceeding or an appeal from the arbitrator's decision.

City and the area representatives may agree on the appointment of an arbitrator. If they cannot agree on the appointment of an arbitrator before the 11th business day after the date arbitration is requested, the Mayor shall immediately request a list of seven (7) neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service. The arbitrator shall set a hearing date no later than the 10th day after the date the arbitrator is appointed.

If the City does not agree with the terms of the arbitrator's decision, the City may not annex the area before the fifth (5th) anniversary of the date of the arbitrator's decision.

ANNEXATION OF AREA QUALIFIED FOR AGRICULTURAL USE:

Per Tx.LGC §43.035, the City is prohibited from annexing land that is appraised for ad valorem tax purposes as land for agricultural use under Chapter 23 of the Texas Tax Code unless the City offers to make a fifteen (15) year development agreement with the landowner under Tx.LGC §212.172 and the landowner refuses. The proffered development agreement may not exceed forty-five (45) years, and must guarantee the continuation of the ETJ status of the qualifying area and authorize the enforcement of all regulations and planning authority of the City that do not interfere with the use of the area for agriculture. *Id. at §43.035(b).*

The development agreement restricting the City's right to annex all or part of the property is void if the landowner files any type of subdivision plat or related development document for the area regardless of how the area is appraised for ad valorem tax purposes. The development agreement is not a permit under the Vested Rights Act. *Id. at §43.035(d) and (3).*

ATTACHMENTS:

1. Exhibit 1 – Map of Potential Annexation Areas – North West Quadrant
2. Exhibit 2 – Map of Potential Annexation Areas – Donut Holes
3. Exhibit 3 - Map of Potential Annexation Areas – Priority Ranking
4. Exhibit 4 – Map of Areas Recommended for Annexation
5. Exhibit 5 – Map of Recommended Areas that will be included in an Annexation Plan
6. Exhibit 6 – Donut Hole 7
7. Exhibit 7 – Donut Hole 9
8. Exhibit 8 – Donut Hole 12

Potential Annexation Areas

Area Number	Acreage
1	1,165 Acres
2	2,277 Acres
3	1,090 Acres
4	1,558 Acres
5	1,765 Acres

Legend:

- Potential Annexation Areas
- Denton City Limits
- Division I E.T.J. Line
- Denton E.T.J.
- Other E.T.J.'s

EXHIBIT 2

Potential Annexation Areas – Donut Holes

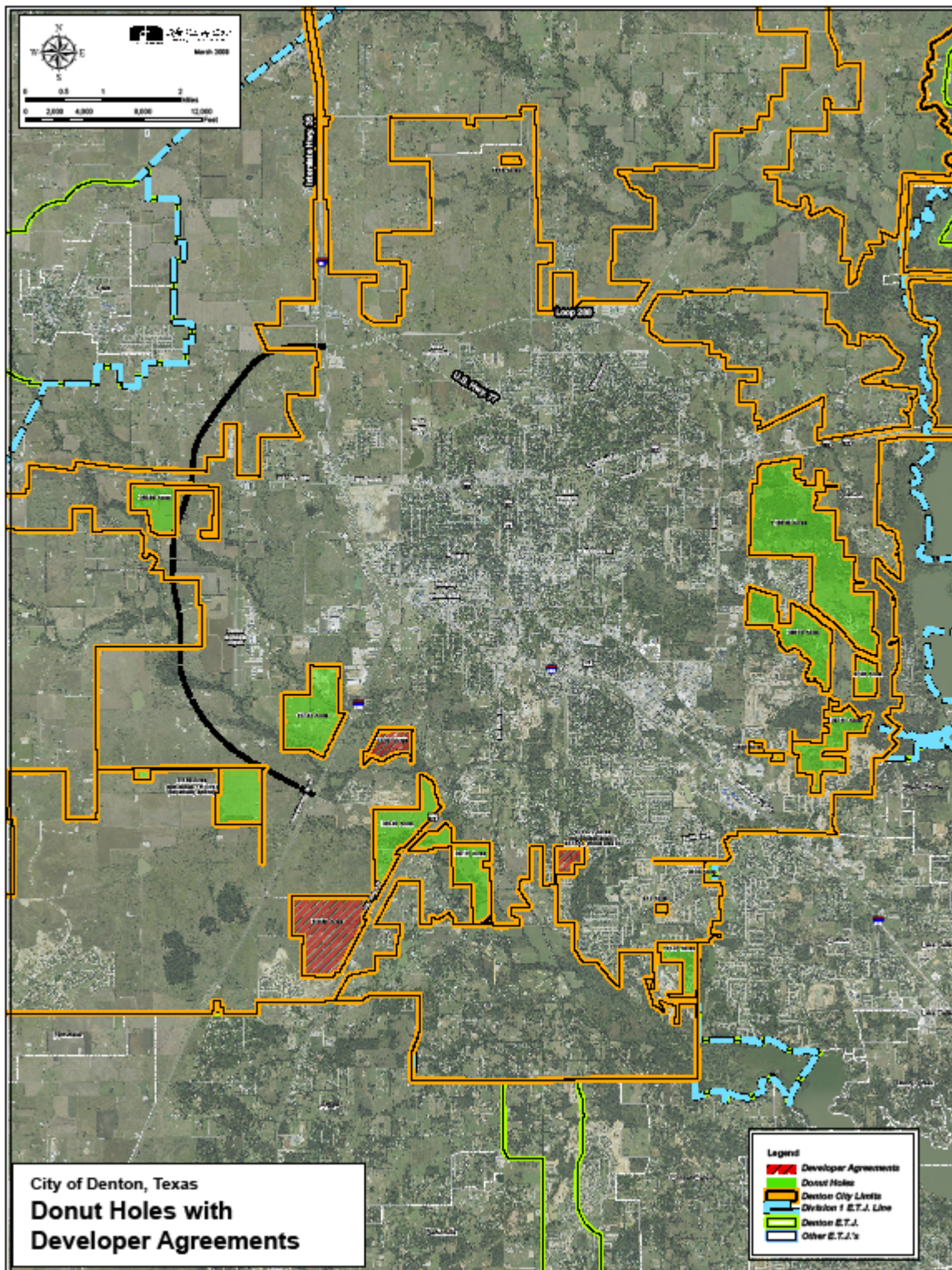


EXHIBIT 3 Priority Ranking

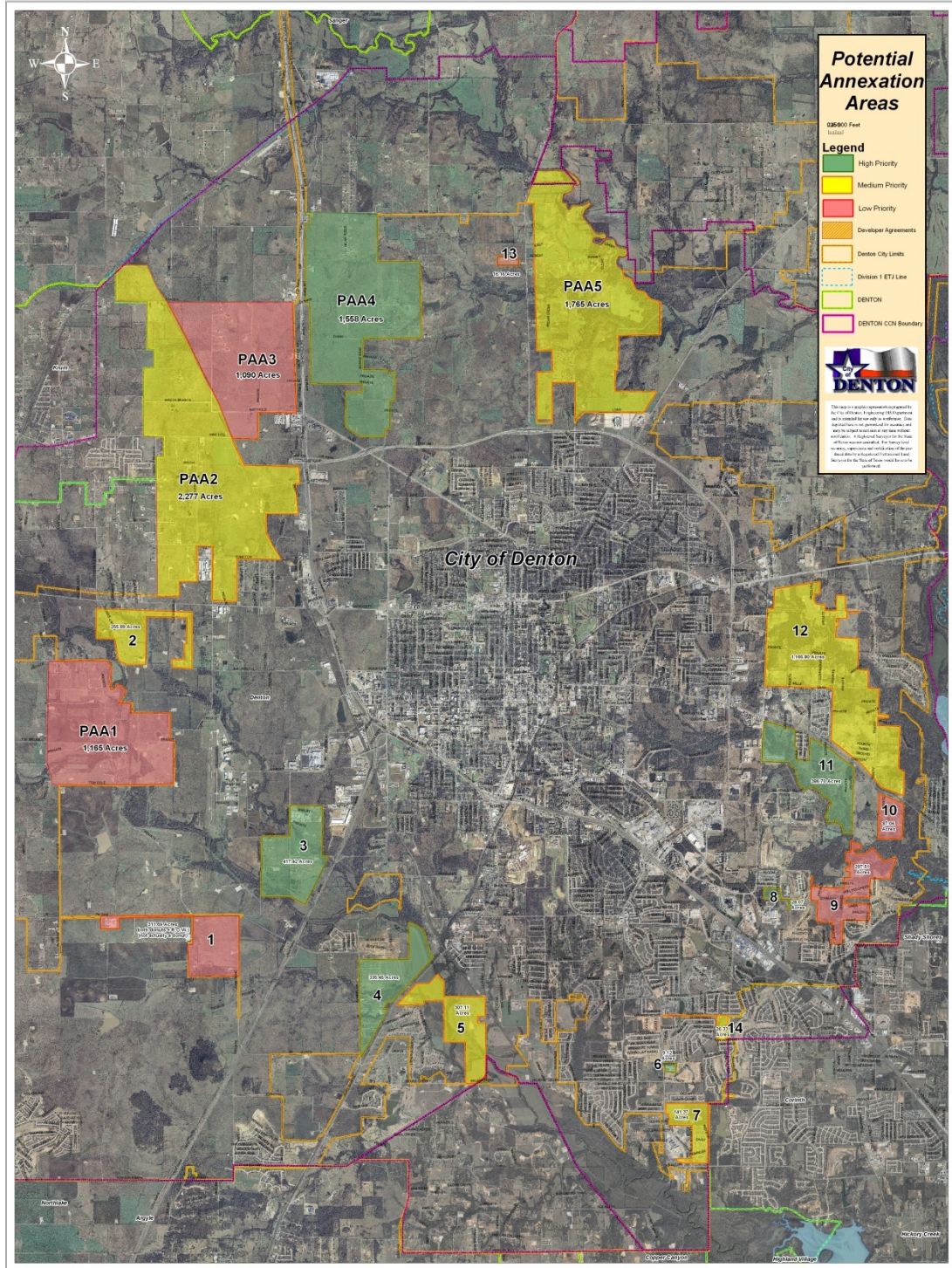


EXHIBIT 4

Areas Proposed for Annexation

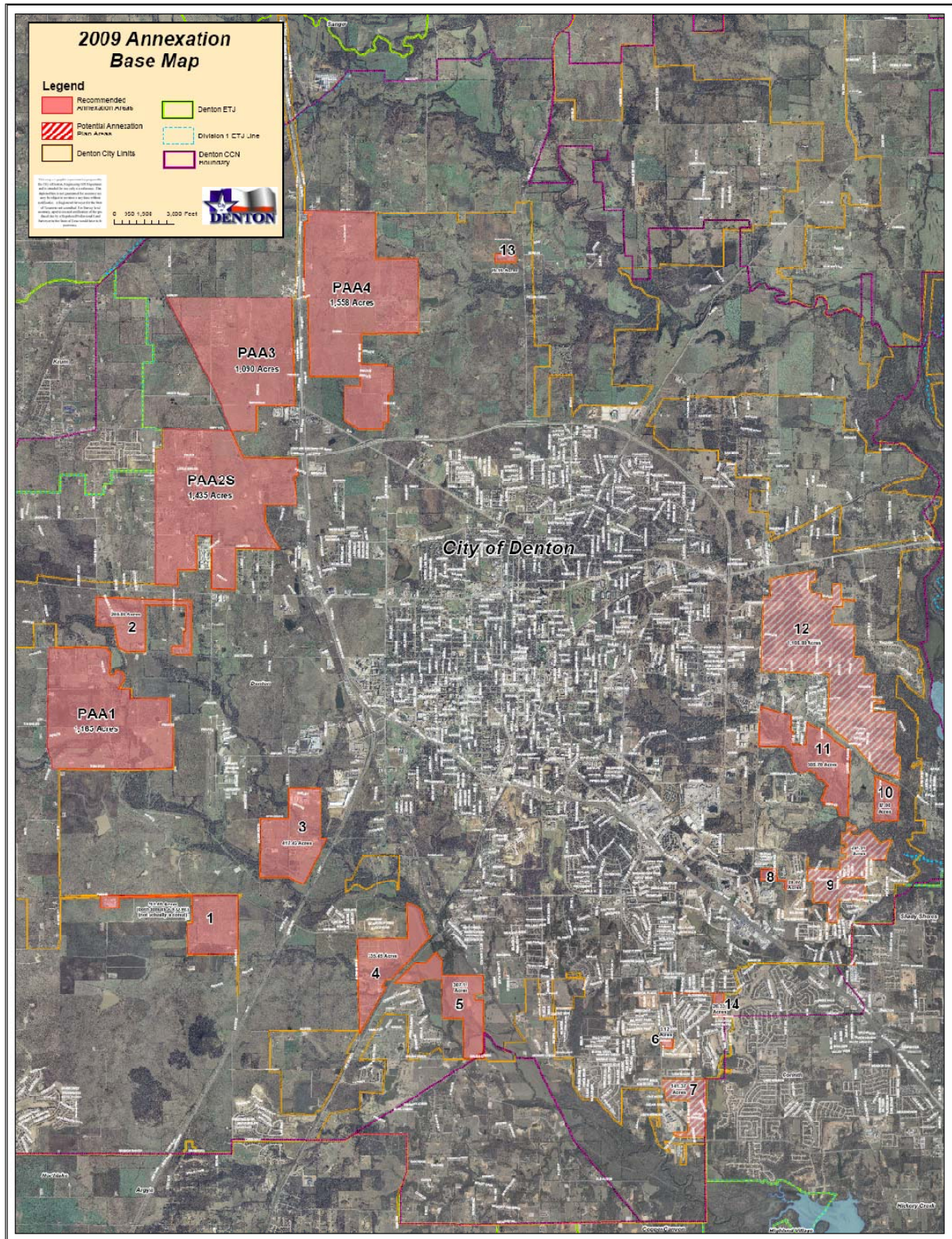


EXHIBIT 5

Proposed Annexation Areas that Must be Included in an Annexation Plan (DH, 7, 9 and 12)

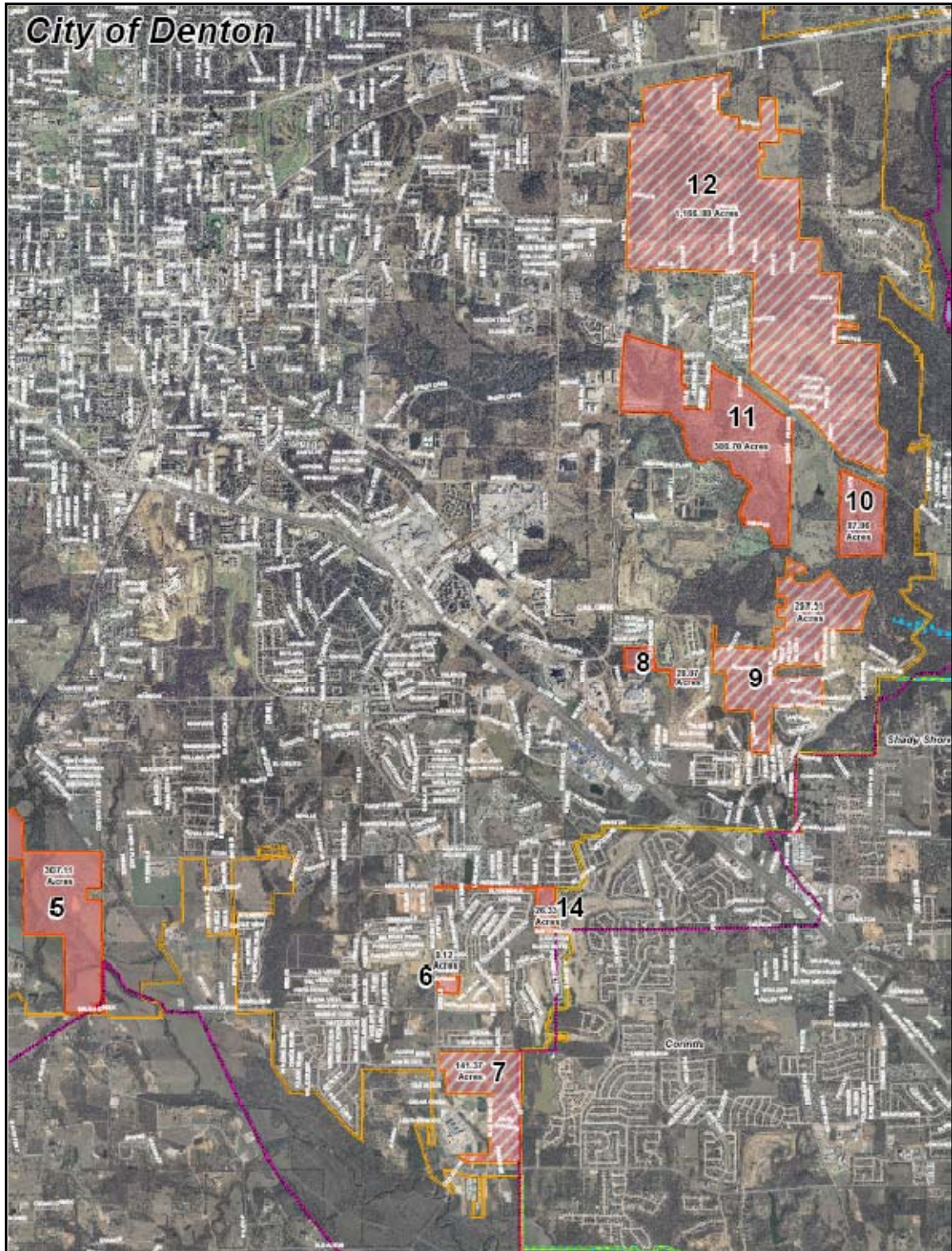


EXHIBIT 6 Donut Hole 7

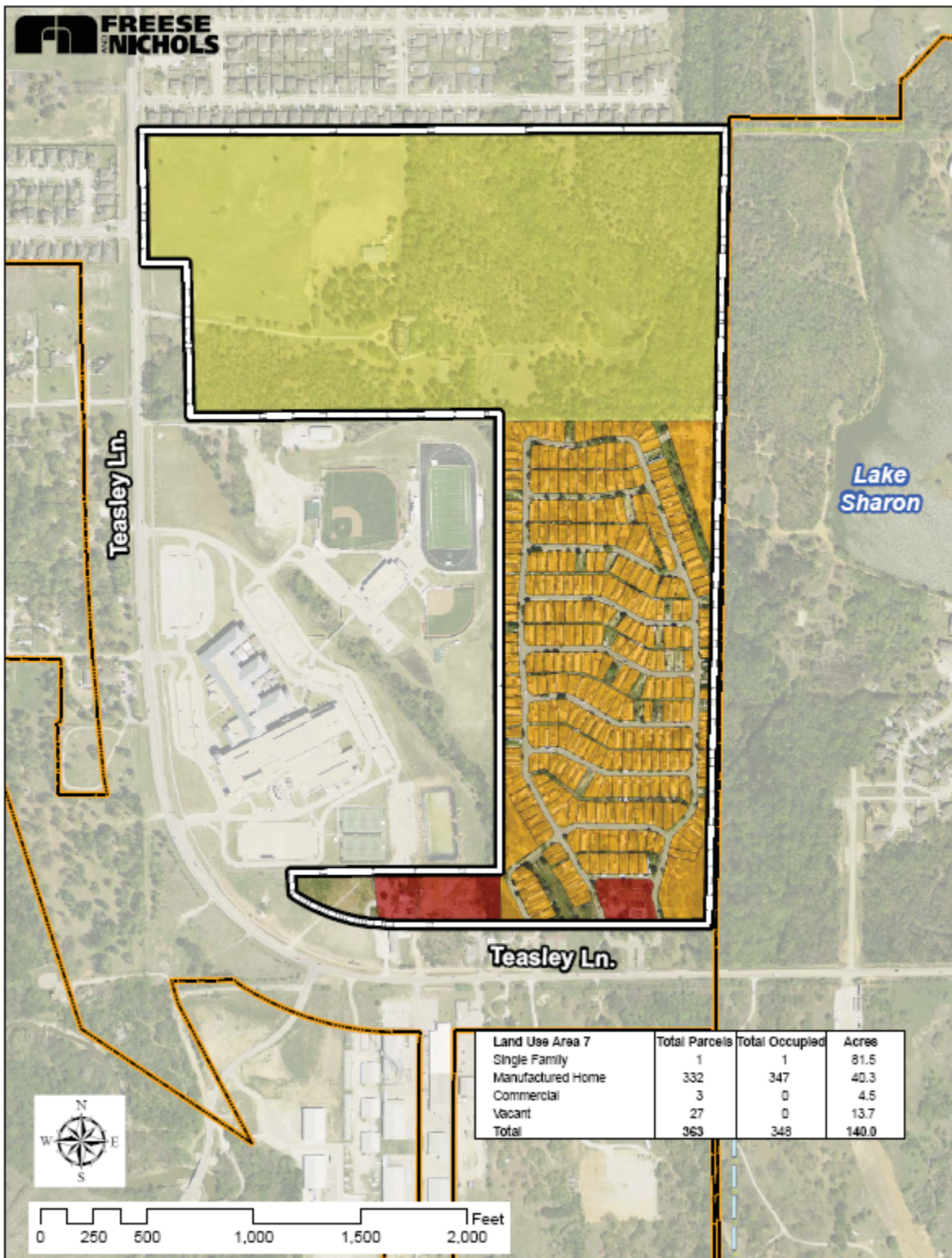


EXHIBIT 7 Donut Hole 9

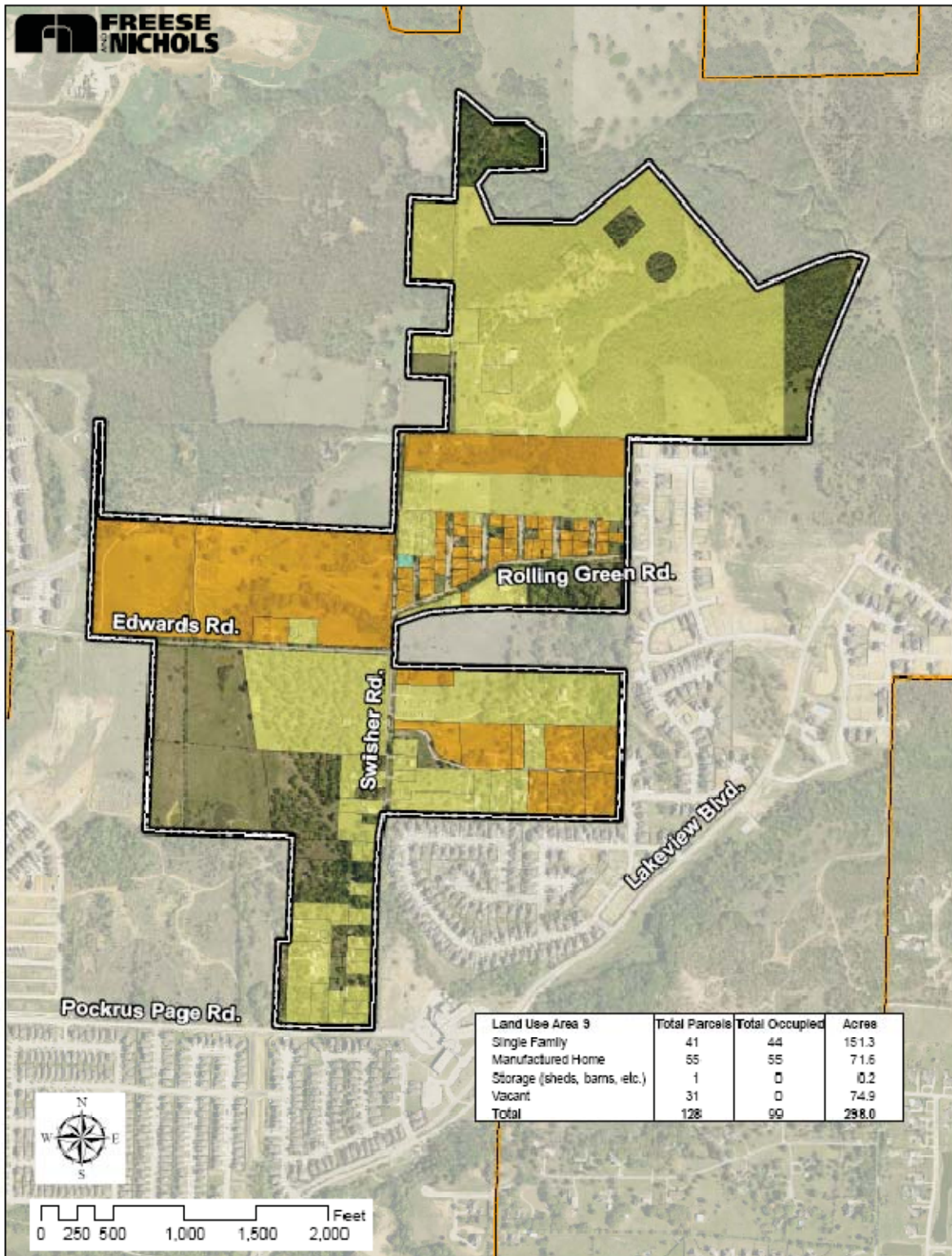


EXHIBIT 8 Donut Hole 12

