

COPY



United States Department of the Interior

NATIONAL PARK SERVICE
Intermountain Region
LAND RESOURCES PROGRAM CENTER
12795 West Alameda Parkway
Lakewood, CO 80228



IN REPLY REFER TO:

L1425(IMLR)

SAAN/103-06-1, 104-10-1, 105-15-1, 105-60-1, 105-86-1, 106-78-1,
107-15, 107-16, 107-17, 107-18, 107-19, 110-02, 110-11-1

MAR - 2 2018

Suzanne B. Scott
General Manager
San Antonio River Authority
100 E. Guenther
San Antonio, Texas 78204

Re: EXCHANGE

NPS Tract Numbers: 103-06-1, 104-10-1, 105-15-1, 105-60-1, 105-86-1, 106-78-1 and 110-11-1 (Federal) NPS

NPS Tract Numbers: 107-15, 107-16, 107-17, 107-18, 107-19 and 110-02 (Non-Federal owned by SARA)

Dear Ms. Scott:

I am writing to let you know the steps we must follow when an interest in federal land is to be exchanged for non-federal property rights.

1. Obtain review of the proposed exchange by state environmental and historical agencies;
2. 2014 Legislation gives authority for National Park Service to commence the land exchange of the tracts identified in the attached exhibits. Law or policy requires use of at least the following in all National Park Service exchanges: (1) Advertisement in local newspapers, (2) Notification of the affected Congressional delegation, (3) Notification of state and local governments, and (4) Notification of adjacent or nearby landowners, both private and governmental.
3. Obtain an executed Agreement to Initiate Land Exchange from the San Antonio River Authority.
4. Obtain appraisals on all tracts. The Agreement to Initiate Exchange will give the appraiser permission to inspect the property. We encourage you or a member of your staff to accompany the appraiser in order to point out and discuss all of the amenities of the property that you feel contribute to its value.
5. Inspect the properties for the presence of hazardous substances or contaminants. We will contact you to obtain permission prior to this inspection.
6. The Phase I Environmental Site Assessment report will be routed to the National Park Service Environmental Program Manager for review and routed to the Regional Directorate for approval to proceed.

7. Prepare Closing Instruction Letters to Alamo Title Company in San Antonio, Texas, to proceed with the collection and preparation of pertinent closing documents, including but not limited to deeds of conveyance approved by our Solicitor Office.

The National Park Service Guidelines require that there be a preliminary agreement outlining the costs to be borne by each party and any other details. I have verbally presented to your staff and counsel the proposed terms of this exchange and a copy of a draft Agreement to Initiate Exchange has been presented to them for review.

If you have any questions or other issues that need to be resolved, please contact me at (303) 969-2607. If you are in agreement with the terms outlined in this letter, please sign and return the copy provided.

Sincerely,



Kathleen A. Hanson
Realty Specialist

Subject to any additional requirements listed below, I have reviewed and approved the attached "Agreement to Initiate Land Exchange".

Additional requirements:

SAN ANTONIO RIVER AUTHORITY

By: _____



Suzanne B. Scott, General Manager

**SAN ANTONIO RIVER AUTHORITY
and
UNITED STATES DEPARTMENT OF THE INTERIOR-NATIONAL PARK SERVICE,
INTERMOUNTAIN REGION**

AGREEMENT TO INITIATE A LAND EXCHANGE

THIS AGREEMENT TO INITIATE LAND EXCHANGE (ATI) is made this 6th day of March, 2018, pursuant to the enabling legislation of the San Antonio Missions National Historical Park (Public Law 95-629, November 10, 1978, 92 Stat. 3635) between the Intermountain Region of the National Park Service (NPS), acting on behalf of the United States of America and hereinafter sometimes referred to as the "Agency," and the San Antonio River Authority ("SARA"), a conservation and reclamation district, subject to the law of the United States and Texas.

Throughout this agreement the Agency and SARA may be referred to jointly as the "Parties" and each individually as a "Party." Unless otherwise stated, all section references below are to Public Law 95-629, November 10, 1978, 92 Stat. 3635.

SARA hereby certifies that it has legal ownership of the non-Federal lands proposed for exchange, and that SARA has the ability to provide title to such lands acceptable to the United States of America. The Agency hereby certifies that the United States holds legal title to the Federal lands proposed for exchange and that it has the authority to have these lands conveyed on behalf of the United States government.

The Parties identified above intend to exchange the lands and interests in lands referenced below and hereby agree to the following terms and conditions in connection with the proposed exchange as follows:

1. DESCRIPTION OF LANDS AND INTERESTS IN LANDS BEING CONSIDERED FOR EXCHANGE/ EQUALIZATION OF VALUES:
 - A. Per Public Law 95-629, the non-Federal lands proposed for exchange are described in **Exhibit A** ("non-Federal lands") attached to this ATI and comprise approximately 45.672 acres, all of which are located within the Congressionally-authorized boundaries of the San Antonio National Historical Park (the "Park"), in Bexar County, Texas.
 - B. Per Public Law 95-629, the Federal lands proposed for exchange are described in **Exhibit B** ("Federal lands") attached to this ATI and comprise approximately 22.90 acres of land administered by NPS, and located within the Congressionally-authorized boundaries of the Park in Bexar County, Texas.
 - C. Per 43 CFR § 2200.0-6(c), if the values of the non-Federal lands and the Federal lands are not equal, then the values shall be equalized in accordance with 43 CFR § 2201.6, which provides for a cash equalization payment to be made to equalize the values of the respective

interests being exchanged. 43 CFR § 2201.6 further provides that the cash equalization payment shall be as small as possible after making all reasonable efforts to equalize value by adding or excluding lands to be conveyed.

- D. If the value of the Federal lands still exceeds the value of the non-Federal lands, after the Federal lands have been modified by excluding lands using the mechanism described above, SARA shall bear the costs of any payment required to equalize values.
- E. Conversely, in the event the non-Federal lands exceeds the value of the Federal lands and the Parties agree to a cash equalization payment, SARA will donate the Non-Federal lands in lieu of a cash equalization payment.

2. APPRAISAL PROVISIONS

- A. GENERAL - Per 43 CFR § 2201.3, appraisals of the Federal lands and the non-Federal lands shall be conducted by an independent appraiser selected by the Department of Interior Office of Valuation Services ("OVS") at the cost of SARA. Because the appraisal is being provided and paid for by a non-Federal party, NPS can provide to that party a list of acceptable appraisers from which to choose.
- B. REQUIREMENTS - Per 43 CFR § 2201.3, the appraisal shall be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions.
- C. APPROVAL - Per 43 CFR § 2201.3-4, the final appraisals shall be subject to the review and approval of the qualified OVS review appraiser. The parties agree that the appraisal reports are being prepared for use by the Federal government. The parties also agree that the Federal government is the client for the appraisals and the approved appraisal reports shall be the property of the Federal government.
- D. The Parties agree that, if they accept the approved appraised values, those appraised values will provide the values of the non-Federal lands and Federal lands to be used in equalizing and finalizing the exchange. The Parties agree that the bargaining and arbitration provisions of 43 CFR § 2201.4 shall not be employed in this exchange.
- E. Prior to the performance of the appraisal of the lands proposed for exchange in this ATI, any additional reservations, exceptions, covenants, restrictions, or encumbrances (together, "Encumbrances") contemplated by any of the Parties, shall be agreed to by the Parties hereto so that any such Encumbrances may be adequately considered in the appraisals.
- F. If: (1) any hazardous substance is discovered on either the Federal lands or non-Federal lands prior to delivery of a patent or deed of conveyance to the other Party; (2) clear title to either the Federal lands or non-Federal lands cannot be provided; (3) either the Federal lands or non-Federal lands contain a reservation, exception, covenant, restriction, or encumbrance that was not previously disclosed and is

objectionable to the receiving Party; or (4) one or more of the Parties believes the value of either the Federal lands or non-Federal lands has substantially changed, the Parties shall evaluate whether to proceed with the exchange as is, proceed with the exchange of just a portion of the lands, or terminate the exchange. If the Parties agree to proceed, SARA will bear the costs of any reappraisals deemed necessary. If the Parties agree to terminate the exchange under the circumstances defined in this subsection, no Party will have any further liability to any other Party.

3. PRELIMINARY TITLE EVIDENCE AND TITLE INSURANCE POLICY

- A. SARA agrees to provide the United States with a title commitment and title insurance policy for the non-Federal lands. The title commitment shall be accompanied by one copy of all liens, reservations, exceptions to title, and encumbrances affecting the subject lands. Title insurance shall be prepared and issued by a qualified title company on the approved form for acquisitions by the federal government, which is TLTA T-11/T-12 US Policy 9/28/91 (revised 12/3/12).
- B. SARA agree to eliminate any and all liens and encumbrances, including but not limited to grazing, mineral or other special uses, that may exist on the non-Federal lands that would preclude the United States from receiving acceptable title. If, at the time of closing, liens for taxes or assessments for special improvement districts for the current year do exist, which amounts have not yet been calculated or payable, SARA will make arrangements to deposit the appropriate amount with the title company in escrow for the payment of taxes and assessments and have these items removed from the title policy.
- C. Unless otherwise required by law or regulations, SARA agrees to convey fee simple title to the lands described in Exhibit A, subject to existing reservations, exceptions, covenants, restrictions, and encumbrances of record that the preliminary title opinion and Superintendent's waiver deem acceptable to the Federal government while retaining for SARA and SARA's assigns the free, uninterrupted and perpetual use of and right to maintain a variable width access easement across Tracts 107-15, 107-16 and 107-17 for the operation and maintenance of and pedestrian access to the San Antonio River Improvements Project. SARA will comply with National Park Service regulations concerning the use of pesticides on the easement. SARA will convey the offered non-Federal lands and minerals by General Warranty Deed for parcels 107-15, 107-16, 107-17 and 110-02 and by Deed Without Warranty for parcels 107-18 and 107-19 via the forms provided by NPS and provided to SARA for review.
- D. The Agency agrees to convey fee simple title to the lands described in Exhibit B, subject to existing reservations, exceptions, covenants, restrictions and encumbrances of record. The Agency will convey the Federal lands by Exchange Deed via the form provided by NPS and provided to SARA for review.
- E. SARA and the Agency further agree that no additional reservations, exceptions, covenants, restrictions, or encumbrances shall be placed on the lands described in

Exhibits A and B without notice to, and an opportunity for comment by, the Agency. The placement of any additional reservations, exceptions, covenants, restrictions, or encumbrances on a particular parcel may be grounds for a Party to refuse to accept title to that parcel as provided below.

4. ASSUMPTION AND SHARING OF COSTS ASSOCIATED WITH EXCHANGE PROCESSING – Refer to **Exhibit C** – Proposed Schedule, Responsible Parties, Cost Estimates

- A. The Agency recognizes that SARA has requested to participate in this exchange in order to further its organizational needs, but that the exchange would also further the Federal government's objective of acquiring the non-Federally owned lands within the congressionally authorized boundaries of San Antonio Missions National Historical Park. SARA agrees to pay the majority of the costs for processing the land exchange, including the cost of title commitments on the non-Federal lands and interests in land and Title Insurance for such lands and interests in lands on the TLTA T-11/T-12 US Policy 9/28/91 (revised 12/3/12) form. SARA shall also be for paying any taxes or assessments that may be due or forthcoming for the year of closing on the non-Federal lands at the time of closing.
- B. The Agency and SARA agree to assist with the administrative actions necessary to complete the exchange.
- C. The Agency will work to acquire the necessary funding to accomplish the tasks necessary to complete the exchange.
- D. SARA will be responsible for the costs associated with the following tasks, if required, under applicable Federal and state laws, on Federal lands and non-Federal lands, as applicable: (1) completing cultural resource inventories and any cultural resource mitigation required; (2) completing Native American consultation requirements; (3) completing Environmental Site Assessments for hazardous materials; (4) completing a Floodplain and Wetlands Report; (5) appraising the Federal lands and non-Federal lands, including appraisal review; (6) complying with the National Environmental Policy Act of 1969 (NEPA) (including preparation and publication); (7) surveying the non-Federal lands; and (8) reimbursing the NPS for applicable administrative and processing costs, as set forth in Exhibit C. SARA will further be responsible for completion of any needed Minerals Reports with regard to either the Federal lands or non-Federal lands.
- E. Any additional cost of processing the exchange that may be determined in the course of processing the exchange and which is not identified in this paragraph will be negotiated between the parties.

5. HAZARDOUS SUBSTANCES

- A. The Parties hereby declare that, to their knowledge, there has been no known or suspected release, storage, or disposal of hazardous substances on either the Federal or non-Federal lands involved in the proposed exchange. If hazardous substances are determined to exist on the Federal lands or non-Federal lands, any party may choose to: (1) conduct further investigation and/or perform necessary remediation on the contaminated site; (2) remove the affected lands from the exchange; or (3) terminate the exchange. NPS will bear the costs of the Phase I Environmental Site Assessments.
- B. If the Agency elects to accept title to any properties where hazardous substances are found, any hazardous substances found on the property must be remediated in accordance with Federal requirements prior to acceptance of title by the United States.

6. PHYSICAL ACCESS, RIGHT TO ENTER

- A. Each Party to this agreement hereby grants permission to the other Party to enter and physically examine the lands owned or administered by the offering Party. Such examination shall be by non-surface-disturbance methods. SARA hereby acknowledges that by executing this agreement it is granting the Agency a right of entry onto SARA's private lands to perform inspections for due diligence purposes. Prior written notice to the other Party for any entry to land is not required.

7. RELOCATION

- A. This ATI serves as a formal notice to SARA of the voluntary nature of this exchange and by executing this agreement, SARA acknowledges that the non-Federal lands are being acquired by the United States on a voluntary basis.
- B. The Parties agree that relocation benefits will not be paid and are not applicable to SARA. In addition, SARA certifies and agrees that this exchange is a voluntary action and that relocation benefits are not applicable to owner-occupants under this exchange. SARA further certifies that to the best of its knowledge, there are no other parties currently occupying the non-Federal lands who would be eligible for relocation benefits and that no parties have been removed from the non-Federal lands within the last 90 days before this ATI was signed.

8. CLOSING

- A. The exchange will not close until all due diligence is completed, reviewed, and approved by the Agency. If the processing steps, as shown in Exhibit C, are fully and satisfactorily completed, the Parties agree to utilize their best efforts to provide for closing to occur as soon as possible, with the expectation that closing can likely occur before the end of December 2018. Closing of the exchange is expressly contingent

upon all of the parties being satisfied with the outcome of the due diligence conducted, receiving the necessary approvals to proceed in accordance with government policy, laws, and regulations, and having the necessary funding available during each step of the exchange process.

- B. Upon successful completion of all applicable requirements as detailed in this agreement, the contemplated land exchange will close in the manner generally described below:
1. SARA will convey to the United States of America the offered non-Federal lands described in Exhibit A, by means of a General Warranty Deed for parcels 107-15, 107-16, 107-17 and 110-02 and by Deed Without Warranty for parcels 107-18 and 107-19 transferring ownership in Fee Simple.
 2. NPS will convey to SARA title to the Federal lands described in Exhibit B by Exchange Deed.
 3. All Parties will transfer title to the non-Federal lands and Federal lands simultaneously in a single transaction through escrow procedures.

Notwithstanding this provision, the Parties understand and agree that closing shall occur, if at all, only if the conditions precedent set forth herein are fully satisfied.

9. AMENDMENT OF AGREEMENT

- A. This ATI may be amended by written consent of all the Parties.
- B. This ATI may be terminated at any time upon thirty (30) days prior written notice by either Party.

10. APPLICABLE LAW

- A. This exchange shall be in accordance with:
1. Public Law 95-629, 92 Stat. 3635
 2. 43 CFR § 2200 et seq., as modified by the NPS procedures; and
 3. Other applicable federal, state, and local laws.

11. NON-BINDING NATURE OF AGREEMENT

- A. Performance by the Agencies of the terms of this ATI is dependent upon the availability of appropriated funds and the satisfactory outcome of the required due diligence, as well as the outcome of the NEPA process. This ATI is not intended to bind the NPS under any contract or other obligation for the future expenditure of

money in excess of such appropriations. This ATI does not legally bind any Party to proceed with processing or to consummate the proposed exchange, or to reimburse or pay damages to any Party to this proposed exchange, or anyone doing business with any such Party.

B. For the purposes of processing this proposed exchange, the contacts for each Party shall be the following individuals:

Primary Contacts:

For SARA:

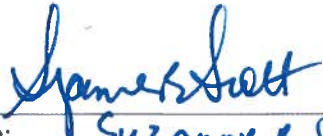
Claude Harding
Real Estate Manager
San Antonio River Authority
600 E. Euclid Avenue
San Antonio, TX 78212
(210) 302-3612
charding@sara-tx.org

For NPS:

Stephen G. Muyskens
Chief Realty Officer, Land Resources Program Center
Intermountain Region, National Park Service
P.O. Box 25287
Denver, CO 80225-0287
Overnight Delivery:
12795 W. Alameda Parkway
Denver, CO 80228
(303) 969-2610
stephen_muyskens@nps.gov

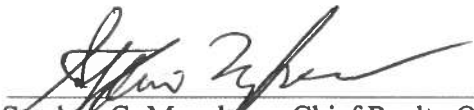
IN WITNESS WHEREOF, the parties have executed this agreement in quadruplicate as of the last date shown below:

SAN ANTONIO RIVER AUTHORITY

By: 
Name: Suzanne B. Scott
Title: General manager

Date 3/1/18

NATIONAL PARK SERVICE

By: 
Stephen G. Muyskens, Chief Realty Officer,
Intermountain Region

Date March 6, 2018

Attachments:

Exhibit A – Legal Description for Non-Federal Lands

Exhibit B – Legal Description for Federal Lands

Exhibit C -- Proposed Schedule, Responsible Parties, and Cost Responsibilities

EXHIBIT C

LAND EXCHANGE ESTIMATED IMPLEMENTATION SCHEDULE AND COST RESPONSIBILITY BETWEEN NATIONAL PARK SERVICE – SAN ANTONIO NATIONAL HISTORICAL PARK AND SAN ANTONIO RIVER AUTHORITY

Action Items:	Responsible for Preparation	Responsible for Costs	Target Date
1. Exchange Proposal – Form: Amendment to Programmatic Agreement: See #8 below.	SARA/NPS	SARA \$0	Ready for signature
2. Land Survey of both NPS and SARA Exchange Lands and NPS Review	SARA	SARA	Complete
3. Prepare Encumbrance/Location Maps of Exchange Lands; Scott Thompson-Buchanan	NPS	NPS	Complete
4. Verification of SARA and NPS Acreages and Legal Descriptions: Scott Thompson-Buchanan and Emilio Molina	SARA/NPS	SARA	Complete
5. Obtain Title Commitments for all properties – SARA and NPS Review	SARA	SARA	Complete
6. Request and Obtain Preliminary Title Opinions on all tracts – take title curative actions as needed	NPS	NPS	Complete; SARA has these
7. Notify Permittee(s) and Adjacent Landowners after PA is amended. A letter is sufficient.	SARA	SARA	In progress
8. Prepare Draft Agreement to Initiate (ATI) and Exhibits: See #1. Form: Amendment to Programmatic Agreement	NPS/SARA	SARA	Ready for signature
9. NPS and SARA Solicitor(s) REVIEW of Draft ATI – Exhibits.	NPS	NPS	Complete
10. Identify Easements to be Reserved (Tommy/James Oliver).	SARA/NPS	SARA	7/1/2017; Emilio will complete metes and bounds
11. Execute Agreement to Initiate (Amendment to Prog. Agmt).	SARA/NPS	SARA	Ready for signature
12. Request Appraisal Services through DOI/Office of Valuation Services (OVS): Need to have title commitments, form Amendment and location maps in place to order.	NPS	SARA	Lands will order on behalf of SARA. Final report due +/- Aug 2018 (or sooner).
13. Obtain OVS Reviewed and Approved Appraisals for SARA and NPS Exchange Lands. Review will take 3-4 weeks.	NPS	NA - incl in #12	On or before Aug 2018
14. Water Rights Analysis w/certificates, claims – Ditch only.	SARA	SARA	Soon; Allison
15. Request Mineral Report OME/OVS – NPS verifying if necessary	NPS	SARA	N/A
16. Prepare Notice of Publication/Posting (NORA) – to be reviewed and approved by NPS and SARA Solicitor(s) – SARA to draft first version for review by parties, solicitor and NPS Washington office. Publish after the appraisals are done.	NA	NA	2014 Legislation completed
17. Notify County Commissioners/Supervisors, State Clearinghouse, Congressional Delegations, Tribal Governments, other City, County State Agencies – provide copy of NORA.	NA	NA	2014 Legislation completed
18. 4-Week Publication Period Local Newspaper and obtain affidavit of publication from newspaper. SA Express News should be sufficient.	NA	NA	2014 Legislation completed

August 8, 2017

19. Submit Land Exchange Notice for 30 day Appropriation committee Review Congressional Oversight - \$500,000 Federal & Over)	NA	NA	2014 Legislation completed
20. Initiate Public Scoping	SARA/NPS	SARA	Complete
21. T&E Reports – Federal Land	SARA/NPS	SARA	Complete
22. Draft Exchange Agreement.	NPS	NPS	Feb 2018
23. Cultural Resources Report & Tribal Consultation – Federal Land – 106 compliance	SARA/NPS	SARA	Complete
24. Floodplains and Wetlands Report Federal Land	SARA/NPS	SARA	Complete
25. Phase I Environmental Site Assessments for all tracts (SARA/NPS) to be reviewed and approved Environmental Management – NPS. This will be done after the execution of the Exchange Agreement and NEPA is completed. NEPA should be done after the appraisals.	NPS	NPS	Initial ESA is complete
26. Request Supplemental Mineral Report if applicable	SARA/NPS	SARA	N/A
27. Obtain SHPO Concurrence on Archaeology, Cultural, and Tribal Consultation Reports – James Oliver to confirm status.	SARA/NPS	SARA	Complete
28. Final Appraisals – Agreement on Value. See #12 -should not be needed	SARA/NPS	SARA	N/A
29. Prepare appropriate NEPA documents	SARA/NPS	SARA	Check with Park.
30. Review by NPS Regional NEPA Compliance Officer	NPS	NPS	Confirm approval.
31. NEPA 30-Day Comment Period NPS Solicitor			Confirm approval.
32. Update Title Commitments and Obtain new Preliminary Title Opinions from NPS Solicitor if necessary and cure title	SARA/NPS	SARA	Lands to update and review.
33. Draft Decision, Draft EA, Draft Administrative Review, Draft Exchange Agreement, Public Comments to SARA	NA	NA	2014 Legislation completed
34. Review of Draft documents by NPS and SARA Solicitor(s)- NEPA	SARA/NPS	SARA	Complete
35. Concurrence by SARA and NPS	SARA/NPS	SARA	Complete
36. Sign Record of Decision – James Oliver to confirm	SARA/NPS	SARA	2014 Legislation completed
37. Execute Exchange Agreement	SARA/NPS	SARA	04/2018
38. Publish Decision and Final EA	SARA/NPS	SARA	N/A
39. Wait 45 days after publication of item #18 (other actions are initiated in the event of adverse comments.)	SARA/NPS	SARA	2014 Legislation completed
40. Send Exchange package to Washington Lands to be submitted for congressional review (30 days)	NPS	SARA	2014 Legislation completed
41. Prepare/Obtain Easement/Relinquishments.	SARA/NPS	SARA	Exhibit "B" includes maintenance requirements
42. Prepare Deeds for all tracts	SARA/NPS	SARA - No cost	Lands to prepare USA Deeds.
43. Execute Easements if necessary prior to final transaction	SARA/NPS	SARA	N/A
44. Prepare Closing Instructions to Title Company	SARA/NPS	SARA/NPS	09/2018
45. Execute Certificate of Inspections and Vendor's Certificates	SARA/NPS	NPS - No cost	08/2018
46. Obtain Title Insurance.	SARA/NPS	SARA/NPS	After closing by Alamo Title
47. Close on Property/Execute Deeds	SARA/NPS	SARA/NPS	09/2018
48. NPS will follow through on final deed retirement and close out process with Washington	SARA/NPS	NPS	No Date Needed

August 8, 2017

EXHIBIT C



SCALE 1"=300'

EXHIBIT OF
NEW REVISED SIZE 3.5 ACRE ACCESS (CYAN-LITE BLUE) AND DARKE
YELLOW IS THE OLD 10.2 ACRE TRACT AS AN ACCESS POINT AND
STAGING FOR THE SAN ANTONIO RIVER MAINTENANCE

MISSION REACH
SARA ACCESS POINT
AND STAGING AREA
SAN ANTONIO RIVER AUTHORITY



**SAN ANTONIO
RIVER AUTHORITY**
Leaders In Watershed Solutions

1 PROGRAMMATIC AGREEMENT BETWEEN
2 THE US ARMY CORPS OF ENGINEERS,
3 THE NATIONAL PARK SERVICE
4 THE SAN ANTONIO RIVER AUTHORITY
5 AND
6 STATE HISTORIC PRESERVATION OFFICER,
7 REGARDING THE IMPLEMENTATION OF THE MISSION REACH
8 ECOSYSTEM RESTORATION AND RECREATION
9 SAN ANTONIO CHANNEL IMPROVEMENT PROJECT
10 CITY OF SAN ANTONIO, BEXAR COUNTY, TEXAS
11

12 **May 10, 2006 RESTATED**
13

14 **WHEREAS**, the US Army Corps of Engineers (USACE), and the San Antonio River
15 Authority (SARA) (the non Federal Sponsor) have partnered together to provide
16 ecosystem restoration and recreation opportunities along the 8-mile Mission Reach
17 portion of the San Antonio River, in a project known as the Mission Reach Ecosystem
18 Restoration and Recreation project; and
19

20 **WHEREAS**, the Mission Reach Ecosystem Restoration and Recreation project
21 (henceforth known as the Project) is identified as the 'Recommended Plan' in the San
22 Antonio River, San Antonio, Texas, Channel Improvement Project Ecosystem
23 Restoration and Recreation General Reevaluation Report and Integrated Environmental
24 Assessment, USACE, Feb. 2006 (GRR); and
25

26 **WHEREAS**, the restoration features will be sustained by a pilot channel, 33-riffle
27 structures, two weirs, modifications to the existing San Juan Dam, utilities, storm water
28 outfalls, roads, sidewalks, and parking lot relocations, two bridge modifications, channel
29 invert erosion protection, channel slope and over-bank erosion protection, and planting
30 native riparian vegetation and recreation features will include approximately 55,800
31 linear feet of multi-purpose trail, shade shelters, picnic tables, water fountains, trash
32 receptacles, benches, lighting, and signage; and
33

34 **WHEREAS**, all other construction activities not specifically listed herein are separate
35 undertakings and are therefore not part of this agreement; and
36

37 **WHEREAS**, the USACE and SARA, with the concurrence of the State Historic
38 Preservation Officer (SHPO), has determined the Area of Potential Effect (APE),
39 developed a survey methodology, and has identified properties eligible, and potentially
40 eligible, for inclusion on the National Register of Historic Places (NRHP); and
41

42 **WHEREAS**, the USACE has determined that the Project will have an adverse effect
43 upon properties included in or eligible for inclusion in the NRHP; and
44

45 **WHEREAS**, approximately 50 acres of land, not currently within the Project Right-of-
46 Way, needed for construction and operation of the Project is within the San Antonio

May 10, 2006 RESTATED

NOV 14 2017

Missions National Historical Park (SAAN), that can
be further broken down as follows:

- Approximately 25 acres owned in fee by the USA and under the jurisdiction of the National Park Service (NPS) (This includes parts of the following NPS Tracts: 103-06, 104-04, 104-07, 104-08, 104-10, 105-15 through 25, 105-29, 105-30, 105-60, 106-04, 106-05, 106-13, 106-14, 106-35, and 106-44)
- Approximately 23 acres owned by the SARA or the City of San Antonio and subject to restrictive covenants pertaining to SAAN as set out in a Cooperative Agreement executed on September 20, 1982 by the SARA, City of San Antonio and the NPS, recorded as Deed 529633 by Bexar County [Vol. 2751, Page 520]. (This includes parts of the following Tracts: 103-03, 103-04, 103-07, 104-01, 104-02, 104-03, 106-15, 106-42, 106-43, 108-44, 108-46, 109-01 and 110-02)
- Approximately 2 acres owned by private parties and subject to easements related to SAAN (This includes parts of the following Tracts: 103-02, 103-10, 103-11, 105-12, 108-42, 108-43, 108-45, 108-47, and 110-07); and

WHEREAS, the USACE, pursuant to 36 CFR Part 800.6(a)(1)(i)(c), has invited the Advisory Council on Historic Preservation (Council) to participate in this consultation and is awaiting Council response; and

WHEREAS, the SHPO, the NPS, the SARA, and the USACE have participated in the consultation and now have been invited to be signatories to this Programmatic Agreement; and

WHEREAS, the SHPO, the NPS, the SARA, and the USACE have executed Amendment No. 1 to this Programmatic Agreement on August 24, 2006, desire to clarify and modify the Programmatic Agreement as a result of the passage of time and other factors and desire to restate the terms of the amended Programmatic Agreement.

NOW, THEREFORE; USACE, the NPS, the SARA, and the SHPO agree that the consultation process for the Project shall be carried out under this Programmatic Agreement and in accordance with the following stipulations to satisfy USACE's Section 106 responsibilities.

Stipulations

(A) Real Estate:

For purposes of the Mission Reach project, the following real estate actions are proposed:

- 1) The following NPS interests in lands (including parts of the following NPS

Tracts: 103-06-1, 104-10-1, 105-15-1, 105-60-1, 105-86-1, 106-78-1 and 110-11-1 being more particularly described by metes and bounds in the attached Exhibit A) will be transferred to SARA through the coordination of and as determined by the Land Resources Program Center, National Park Service, Intermountain Region. The parties recognize that these tracts may be different than those described in the 7th Whereas statement above.

- 2) The SARA has acquired fee title to parts of NPS Tracts 107-15, 107-16, 107-17, 107-18, 107-19 and 110-02 being more particularly described by metes and bounds in the attached Exhibit B. SARA will retain a variable width access easement across Tracts 107-15, 107-16 and 107-17 being more particularly described by metes and bounds in the attached Exhibit C for the operation and maintenance of the project and pedestrian access to the Project.
- 3) The SARA will be responsible for the contracting and obtaining of all realty services such as Title Commitments and Policies, Phase I and Phase II Environmental Site Assessments, Appraisals, and the Closing of all real estate transactions. All due diligence service reports will be provided to NPS Land Resources Program Center Intermountain Region for review and compliance with Department of the Interior (DOI) and Department of Justice (DOJ) regulations prior to the execution of any realty transaction. With regard to the USACE furnished appraisals and in accordance with DOI regulations, the DOI Office of Valuation Services will provide the review for the acceptance of the appraisal reports on behalf of the NPS.
- 4) The Cooperative Agreement noted in the 7th Whereas statement above would be amended, and other instruments would be executed and delivered as necessary, to remove and release of record the restrictive covenants from parts of the following Tracts: 103-03, 103-04, 103-07, 104-01, 104-02, 106-15, 106-42, 106-43, 108-44, 108-46, 109-01 and 110-02.
- 5) The NPS would execute a boundary adjustment to the authorized boundaries of SAAN in order to remove lands outlined in A.1 and A.2 above.
- 6) The interests of USACE and SHPO in the Programmatic Agreement and the Project have been satisfied and USACE and SHPO consent to the further amendment of the Programmatic Agreement by NPS and SARA without the participation of USACE and SHPO.

(B) Cultural Landscape

The construction and operation of the Project will have an adverse effect on the cultural landscape of the SAAN on the above described lands. These adverse effects have been evaluated by the USACE, in consultation with the Texas SHPO, as required under Section 106 of the National Historic Preservation Act. To mitigate these adverse effects, approximately 45.65 acres of land adjacent to the SAAN shall be conveyed to the NPS. These lands have similar cultural significance to those lands being impacted by the

project and are part of the same contiguous cultural landscape. This conveyance shall be done at the expense of the SARA. The lands are shown on Exhibit B and are made up of approximately 45.65 acres.

- 1) The land acquired by SARA will be conveyed to the USA for purposes of SAAN with jurisdictional control by the Department of the Interior.
- 2) The SARA will be responsible for providing relocation assistance associated with this mitigation in accordance with Federal Law.

The Project design currently includes the widening of the San Antonio River floodway on NPS Tract Nos. 108-42 through 108-47, which provide for the protection and preservation of portions of the Acequia de Espada. The USACE will conduct ground surveys on these tracts to verify the location of the Acequia de Espada and modify the Project design if necessary to ensure that the Project design does not adversely affect the acequia. A buffer of 30 to 50 feet (as feasible) will be left between the project construction and all cultural features outside of the project footprint. Cultural features may include, but are not limited to, acequias, dams, spillways and the historic San Antonio River channel (San Juan Loop).

(C) Archaeology

The USACE will ensure the following stipulations are carried out concerning archaeological resources within the footprint of the USACE Project construction and on all lands acquired by SARA and conveyed to the USA for cultural resources mitigation purposes. The construction footprint and mitigation lands constitute the APE for archaeological resources. Mitigation lands will be surveyed separately once they have been acquired:

1) Identification of Historic Properties

- a. Survey. The USACE has conducted a cultural resources survey within the entire construction footprint of the USACE Project. The survey was conducted by professional archaeologists meeting the Secretary of the Interior's professional qualification standards as defined in the Federal Register Volume 48 No. 190 page 44738.
- b. Determination of National Register Eligibility. The USACE, in consultation with the SHPO, has agreed to extant determination of eligibility for inclusion in the NRHP for two archaeological sites, 41BX254 and 41BX256. Two newly located sites are in the process of being evaluated for eligibility for inclusion in the NRHP in consultation with the SHPO and in accordance with 36CFR Part 800.4.
- c. Test Excavations. In the event that additional information is

required to assess the eligibility of any cultural resources for inclusion in the NRHP, the USACE and SHPO shall consult to prepare a test excavation plan.

2) Assessment of Adverse Effect

- a. In consultation with the SHPO, The USACE shall apply Criteria of Adverse Effect to all historic properties identified within the construction APE in accordance with 36 CFR Part 800.5
- b. If the effect is determined to be adverse, as defined in 36 CFR Part 800.5, the USACE will develop a treatment plan in consultation with the SHPO, SARA and the NPS.

3) Treatment of Historic Properties

- a. Avoidance. Whenever possible, historic properties will be avoided by project impacts and protected in place.
- b. Data Recovery Plan. A detailed data recovery plan shall be developed by the USACE in consultation with the SHPO for those historic properties to where adverse effect cannot be avoided. The SHPO and the NPS will provide written comments to the USACE within 30 days of receipt of the plan. The plan shall specify, at minimum:
 - i. The historic property, properties, or portions of properties where data recovery is to be carried out;
 - ii. Any historic property, properties, or portions of properties that will be destroyed/altered/transferred without data recovery;
 - iii. The research questions to be addressed through the data recovery
 - iv. The methods to be used, with explanation of their relevance to the research questions
 - v. The methods to be used in analysis, data management, and dissemination of data, including a schedule;
 - vi. The proposed disposition of recovered materials and records;
 - vii. Proposed methods for involving the interested public in the data recovery including, but not limited to methods by which Federally recognized Indian Tribes who historically used this region or continue to use the area, will be kept informed of the work and afforded the opportunity to participate;
 - viii. Proposed methods for disseminating the results of the work to the interested public and to appropriate Federally

- 234 recognized Indian Tribes who historically used this region
235 or continue to use the area; and
236 ix. Proposed schedule for the submission of progress reports to
237 the SHPO.
238

239 If necessary, additional property-specific data recovery strategies will be
240 developed within the overall framework of the data recovery plan for
241 direction of work at individual properties or groups of properties. The need
242 for such additional strategies will be determined in consultation with the
243 SHPO and the NPS.
244

- 245 4) Treatment of Human Remains. Treatment of human remains, including
246 prehistoric and historic burials, will be carried out in accordance with a
247 comprehensive plan detailed in the research design developed under
248 stipulation (3)b and in accordance with the Native American Graves
249 Protection and Repatriation Act (NAGPRA), if applicable.
250

251 5) Discovery
252

- 253 a. If previously unidentified cultural resources are identified during
254 construction, construction shall stop in the vicinity of the resource, and
255 the USACE cultural resources technical point of contract shall be
256 notified within 24 hours of the discovery.
257
258 b. The USACE shall immediately notify the SHPO and the NPS (if the
259 discovery is within the SAAN boundary). Within 48 hours of
260 notification, field assessment will be undertaken. Assessment of the
261 site by the USACE under 36 CFR Part 60 will be completed within 5
262 days or less of discovery.
263
264 c. If the cultural resource is determined to be eligible for inclusion in the
265 NRHP, a treatment plan will be specified by the USACE within 10
266 days of assessment in consultation with the SHPO and the NPS, if the
267 site is within the SAAN boundary.
268
269 d. Any burials accidentally disinterred will be treated in compliance with
270 NAGPRA, if applicable.
271

272 6) Reporting
273

274 Upon Completion of each major phase of work (survey, testing, or data
275 recovery), the USACE shall submit draft reports to the NPS and the
276 SHPO. Comments shall be provided to the USACE within 30 calendar
277 days from receipt. The final report will be distributed among consulting
278 parties, including the appropriate federally recognized Indian Tribes
279 according to a plan prepared by the USACE and consulting parties.
280

281
282 **(D) Document Review and Comment:**
283

284 The SHPO and NPS will be afforded thirty (30) days after receipt to comment on any
285 documentation submitted by the USACE. Documents will then be revised according to
286 agency comments until all agencies agree the documents are acceptable. No construction
287 will begin until all parties have agreed that the final report on cultural resource mitigation
288 is acceptable.
289

290 **(E) Dispute Resolution:**
291

292 Should any party to this agreement object at any time to any actions proposed or the
293 manner in which the terms of this PA are implemented, the USACE shall consult with the
294 objecting party(ies) to resolve the objection. If the USACE determines, within 30 days,
295 that such objection(s) cannot be resolved, the USACE will:
296

- 297 1) Forward all documentation relevant to the dispute to the Council in
298 accordance with 36 CFR Section 800.2(b)(2). Upon receipt of adequate
299 documentation, the Council shall review and advise the USACE on the
300 resolution of the objection within 30 days. Any comment provided by the
301 Council, and all comments from the parties to the PA, will be taken into
302 account by the USACE in reaching a final decision regarding the dispute.
303
- 304 2) If the Council does not provide comments regarding the dispute within 30
305 days after receipt of adequate documentation, the USACE may render a
306 decision regarding the dispute. In reaching its decision, the USACE will
307 take into account all comments regarding the dispute from the parties to
308 the PA.
309
- 310 3) The USACE's responsibility to carry out all other actions subject to the
311 terms of this PA that are not the subject of the dispute remain unchanged.
312 The USACE will notify all parties of its decision in writing before
313 implementing that portion of the Undertaking subject to dispute under this
314 stipulation. The USACE's decision will be final.
315

316 **(F) Duration, Amendments and Termination:**
317

318 This agreement will be null and void if its terms are not carried out within fifteen (15)
319 years from the date of the execution of the original Programmatic Agreement on May 10,
320 2006. Prior to such time, the USACE may consult with the other signatories to reconsider
321 the terms of the agreement and amend in accordance with this stipulation.
322

323 Any party to this agreement may propose, in writing, to USACE that the terms and/or
324 stipulations of this agreement be amended. USACE will consult with the other parties to
325 this agreement to consider such an amendment.
326

327 Any party to this agreement may terminate it by providing thirty (30) days notice to the

other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, USACE will comply with 36 CFR sections 800.4 through 800.6 with regard to the activities covered by this agreement.

Execution and implementation of this agreement is evidence that USACE has satisfied its Section 106 and 110 responsibilities for the Project.

All other terms and conditions of the Agreement remain unchanged.

US ARMY CORPS OF ENGINEERS, FORT WORTH DISTRICT

By: _____ Date _____
CALVIN C. HUDSON, II Colonel, Commanding

NATIONAL PARK SERVICE

By: Mardi Arce Date 3/6/18
MARDI ARCE Superintendent
San Antonio Mission National Historic Park

STATE HISTORIC PRESERVATION OFFICER

By: _____ Date _____
State Historic Preservation Officer

SAN ANTONIO RIVER AUTHORITY

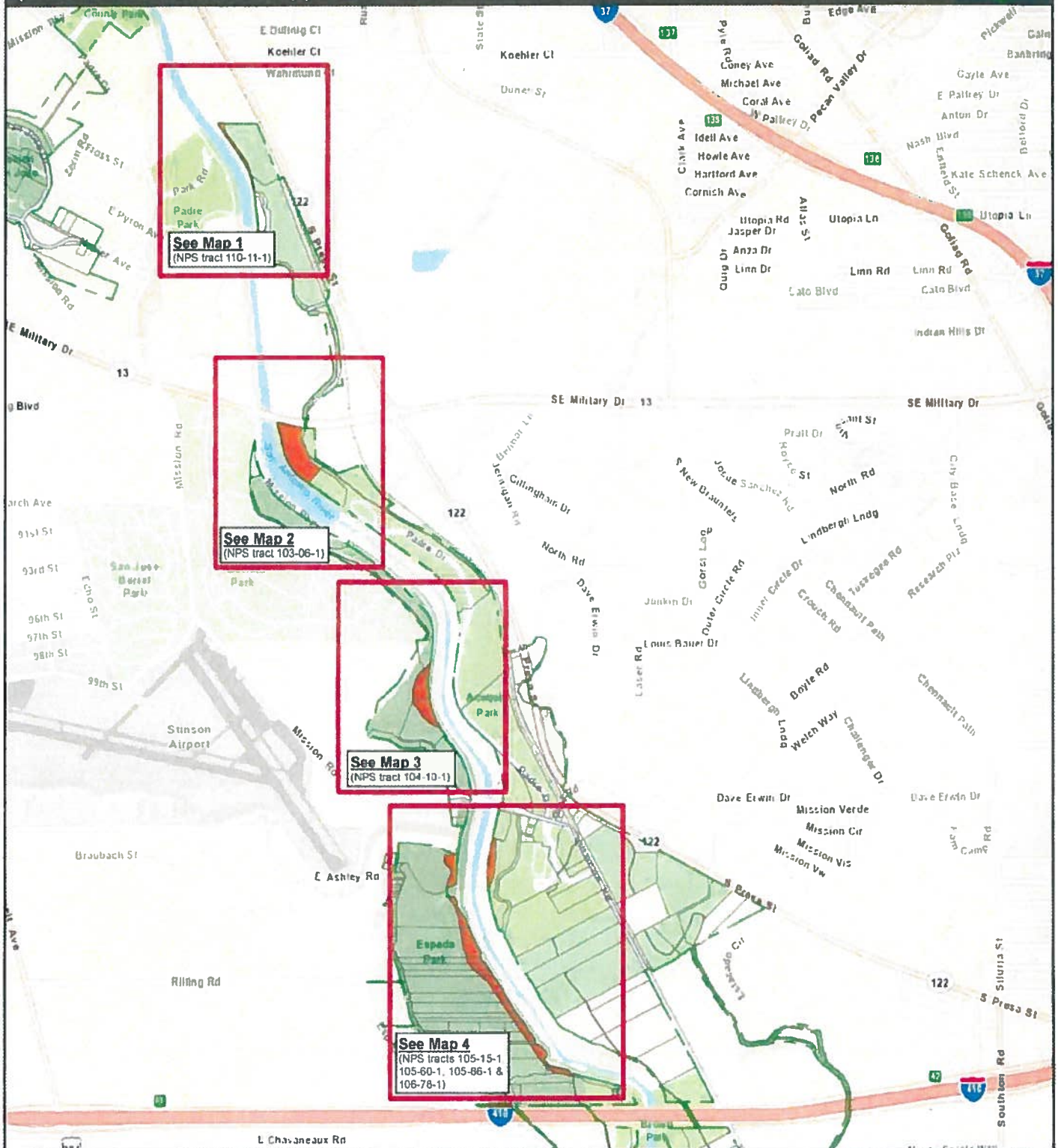
By: Suzanne B. Scott Date 11-6-17
SUZANNE B. SCOTT, General Manager

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(NPS to SARA, Index Map)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
July 2015



SCALE: 1" = 2,000'
0 500 1,000 2,000
Feet

- Legislated park boundary
- NPS tract boundary
- NPS to SARA

Property ownership data shown is compiled from deeds, plats, surveys, and other source data. This is not a surveying quality drawing and should be used for general planning purposes only. Acreages have been derived from surveys and office compilations. Street map base: ESRI.

Texas State Plane Coordinate System,
South Central Zone, NAD83, US Foot

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(NPS to SARA, Map 1 of 4)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
July 2015



SCALE: 1" = 300'
0 75 150 300
Feet

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- ▨ NPS to SARA

Property boundary data shown is compiled from deeds, plats, surveys, and other public data. This is not a surveying quality drawing and should be used for general reference only. Accuracy has been derived from surveys and other compilations. Aerial photo: City of San Antonio.

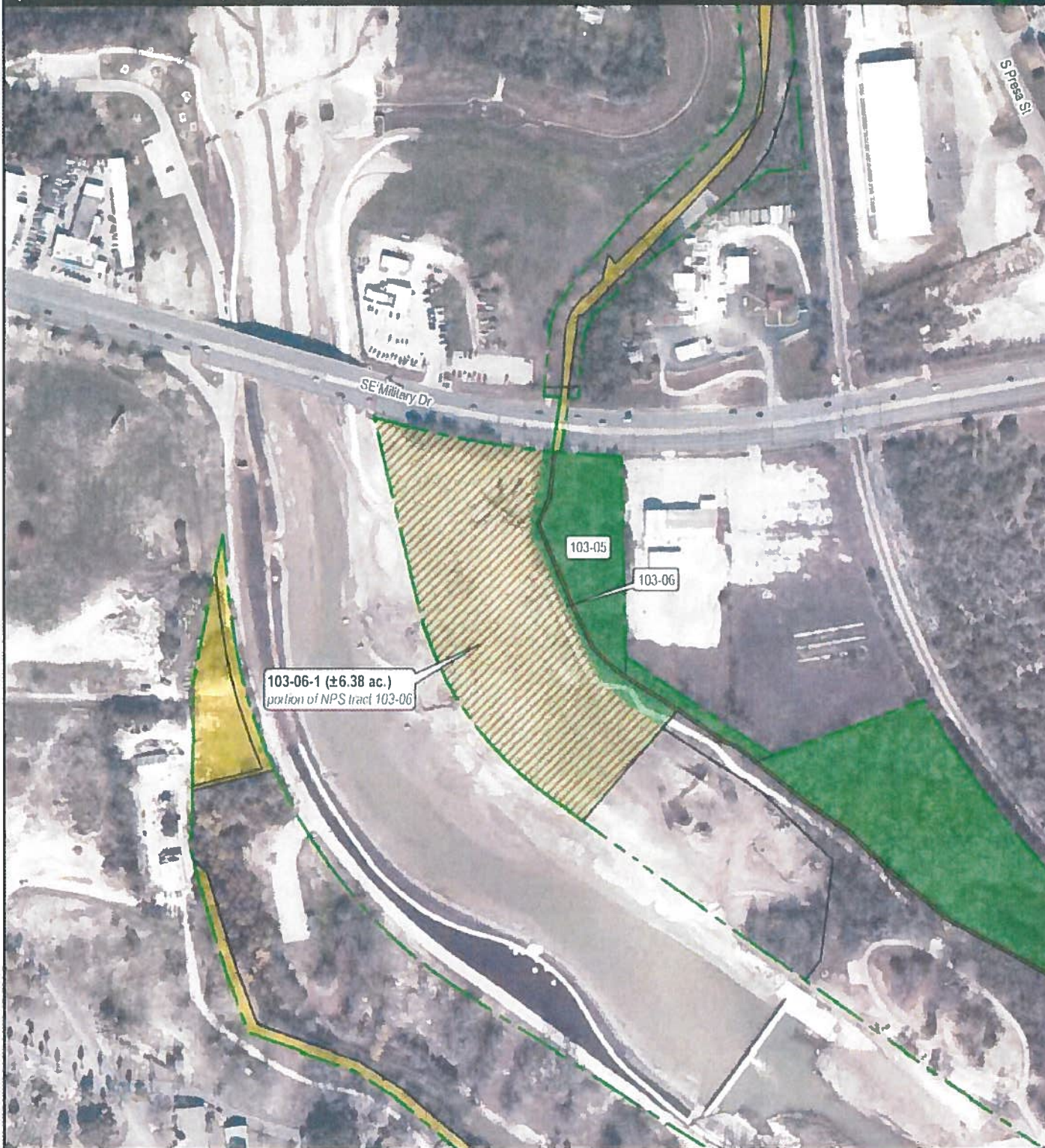
Image: San Antonio Geographic System, South Central Zone, NAD83, U.S. Foot

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(NPS to SARA, Map 2 of 4)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
July 2015



SCALE: 1" = 300'
0 75 150 300
Feet

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- ▨ NPS to SARA

1. Property boundaries shown are compiled from
aerial photography, maps, and other source data.
This is not a surveying quality document and should
not be used for general planning purposes only.
Accuracy has been derived from previous and
other compilations. Aerial photo: City of San
Antonio.

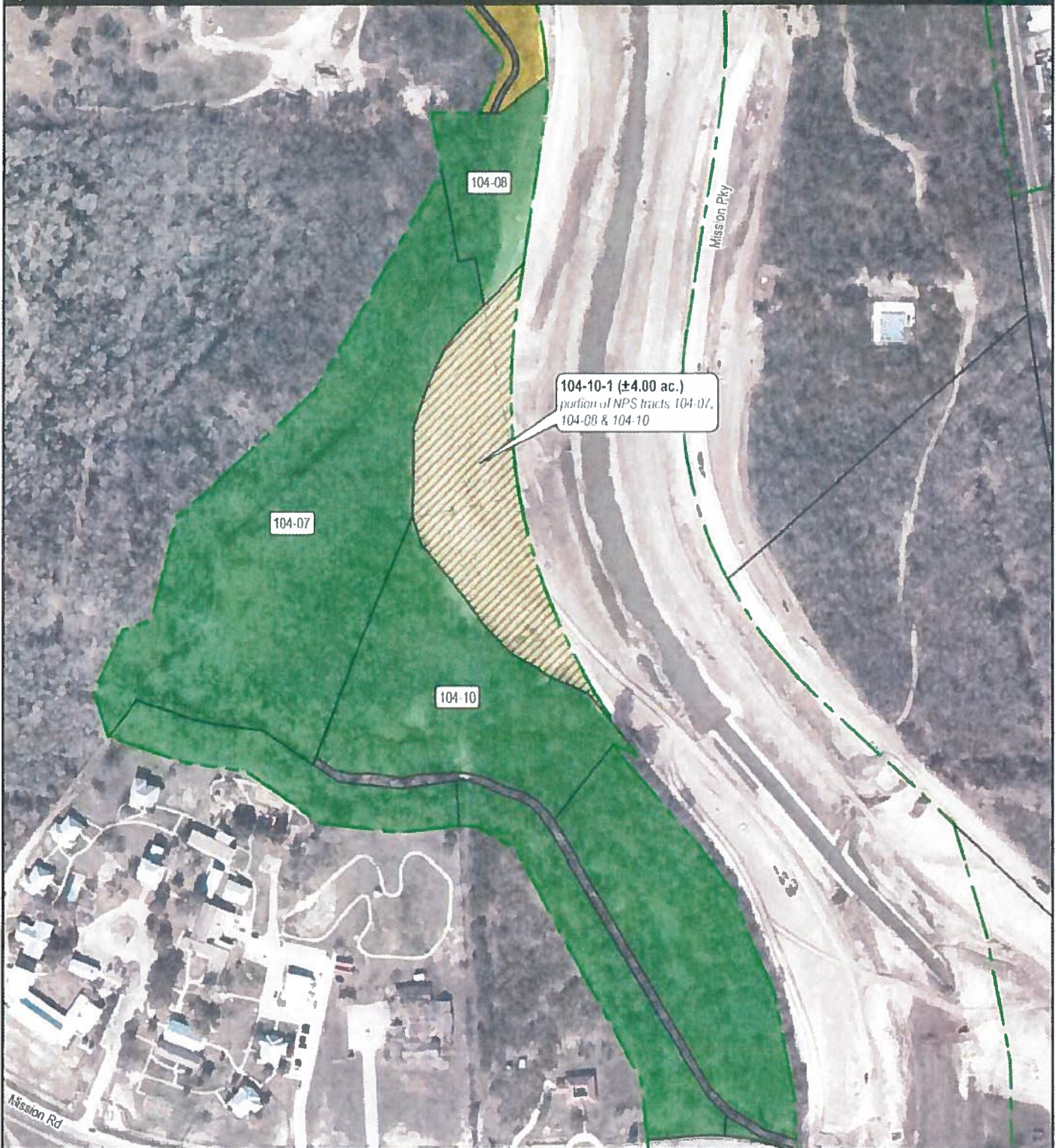
Tracts 103-05 and 103-06 are located in the
San Antonio River, NPS, US Forest
Service.

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(NPS to SARA, Map 3 of 4)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
July 2015



SCALE: 1" = 300'

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- NPS to SARA

Property ownership data shown is extracted from digital, plan, survey, and other source data. This is not a surveying quality drawing and should be used for general planning purposes only. Owners have been notified of this survey and other compliance. Aerial photo: City of San Antonio.

Source: State Plane Coordinate System, North American Datum, NAD83, U.S. Foot

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(NPS to SARA, Map 4 of 4)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
July 2015



SCALE: 1" = 500'
0 125 250 500
Feet

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- NPS to SARA

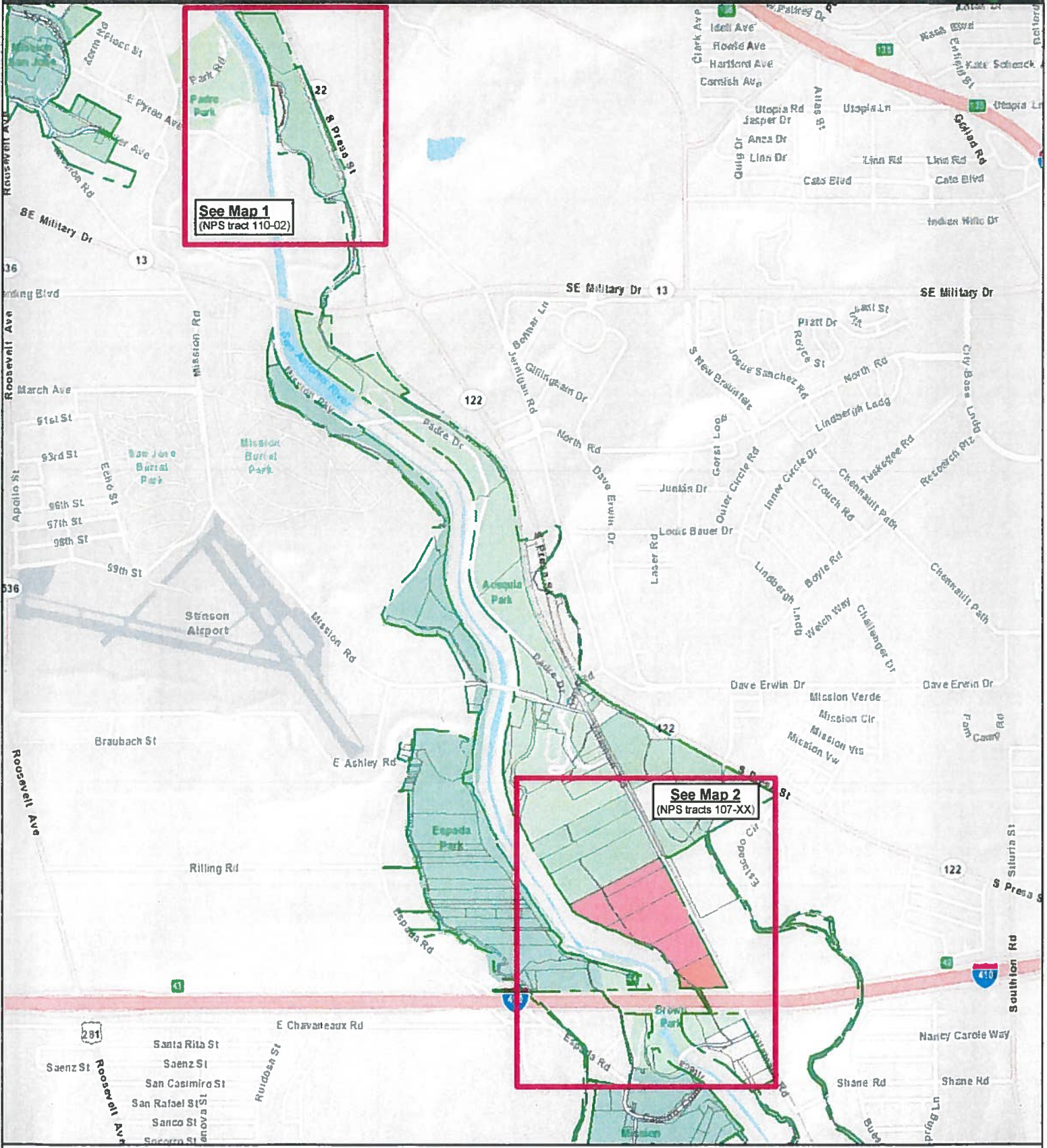
Property ownership data shown is compiled from deeds, plat, survey, and other sources of title. This is not a warranty of title or should be used for purposes of title. Arrows have been derived from survey and other data. Arrows shown: Arrows shown: City of San Antonio
Source: State Plane Coordinate System
South Central Zone, NAD83, UTM Foot

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(SARA to NPS, Index Map)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
February 2018



SCALE: 1" = 2,000'
0 500 1,000 2,000
Feet

- Legislated park boundary
- NPS tract boundary
- SARA to NPS

Property ownership data shown is compiled from deeds, plats, surveys, and other source data. This is not a surveying quality drawing and should be used for general scaling purposes only. Acreages have been derived from surveys and office compilations. Street map base: ESRI
Texas State Plane Coordinate System, South Central Zone, NAD83, US Foot.

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(SARA to NPS, Map 2 of 2)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
February 2018



SCALE: 1" = 500'
0 125 250 500
Feet

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- SARA to NPS

Property ownership data shown is compiled from deeds, plats, surveys, and other source data. This is not a surveying quality drawing and should be used for general scaling purposes only. Acreages have been derived from surveys and office compilations. Aerial photo: City of San Antonio.

Texas State Plane Coordinate System, South Central Zone, NAD83, US Foot.

San Antonio Missions National Historical Park

San Antonio River Authority/NPS Exchange Tracts

(SARA to NPS, Map 1 of 2)

National Park Service
U.S. Department of the Interior



National Park Service
Lands Resources Program Center
Intermountain Region
June 2015



SCALE: 1" = 400'

0 100 200 400
Feet

- Legislated park boundary
- NPS tract boundary
- NPS secondary tract boundary
- NPS land (fee)
- NPS easement
- SARA to NPS

Property ownership data shown is compiled from deeds, plat surveys, and other source data. It is not a warranty of accuracy and should be used for general location purposes only. Permitted have been derived from surveys and other source data. Avoidance, City of San Antonio.

Using State Plane Coordinate System, North Central Zone, NAD83, US Foot