

CAUSE NO. 9052 at FILED HAYS COUNTY, TEXAS
APR 29 2005

HAYS COUNTY, TEXAS
Plaintiff

V.

W. NICHOLAS BURKHALTER,
KAREN FORD and
CHASE MANHATTAN MORTGAGE
CORP.

Defendants

* PROCEEDINGS IN
* EMINENT DOMAIN
*
* COUNTY COURT AT LAW # ____
*
*
* HAYS COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Plaintiff, the County of Hays, having by law the right of eminent domain and power of condemnation, acting herein by and through its duly elected and qualified Commissioner's Court, for and on behalf of the County of Hays, complaining herein of:

- (1) W. NICHOLAS BURKHALTER of 13689 Nutty Brown Road, Austin, Texas 78737,
- (2) KAREN FORD of 13689 Nutty Brown Road, Austin, Texas 78737, and
- (3) CHASE MANHATTAN MORTGAGE CORPORATION whose agent for service is CT Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

hereinafter styled Defendants, whether one or more, and for cause of action respectfully represent to the Court as follows:

I.

Per Texas Rule of Civil Procedure 190, it is intended that discovery, if any will be conducted under level 2.

II.

Hays County has laid out and determined that there exists a necessity for, and has determined to acquire by condemnation or otherwise, the hereinafter described land for

County Road improvement purposes, the plans and specifications for the acquisition of a fee simple for the right-of-way of said County Road, namely Nutty Brown Road, have been furnished to the Commissioner Court of Hays County, Texas; and it has been authorized and directed to acquire, by condemnation or otherwise, the said Commissioner's Court has, in the exercise of the powers and duties conferred upon it, determined that there is exists a necessity for such County Road improvement and that the right-of-way sought herein is likewise necessary and convenient for the course of said public road, that said County Road when improved, will remain an integral part of the Hays County road system, which right-of-way and lands herein sought to be condemned forms a part of a tract of land owned by the Defendants in Hays County, Texas, more particularly described as follows:

a tract or parcel of land containing 0.8677 acres (37,799 square feet), situated in the Nevi Chamberlain Survey No. 2, Hays County, Texas, being a portion of that 10.352 acre tract (being the total of Tract 1 having 2.497 acres, Tract 2 having 2.500 acres and Tract 3 having 5.355 acres) conveyed to W. Nicholas Burkhalter by deed recorded in Volume 1100, Page 687 of the Deed Records of Hays County, Texas; the herein described 0.8677 acre tract being more particularly described by metes and bounds in Exhibit A attached and incorporated herein for all purposes.

However, there is excluded from said fee estate to be condemned all the oil, gas and sulfur which can be removed from beneath said land without any right whatever remaining to the owners of said oil, gas and sulfur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same.

III.

Plaintiffs are acting under and by virtue of the authority of Texas Local Government Code Ann., Chapter 261 et seq.; Texas Property Code Ann., Chapter 21 et seq.; and Texas Transportation Code Ann., Chapter 251 et seq.

IV.

Plaintiff, Hays County would further show that, acting by and through its duly authorized agent, it has made a bona fide attempt to acquire the hereinafter property by purchasing the same from the owners, and by offering to pay such reasonable damages, if any, as might accrue to the balance of the land as a result of the acquisition of such right-of-way and its use for the aforesaid purpose; and that Defendants have submitted a counter-proposal yet Plaintiff and Defendants have been unable to agree upon the sum to be paid for the purposes of said tract of land.

V.

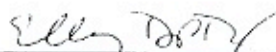
Plaintiffs are informed and believe, and so allege, that the Defendant hereinbefore named are the record owners of said property, or are holding or claiming some interest in or title to said property; and if Plaintiffs are in error as to the ownership of said property, or as to the extent of title or interest of the hereinbefore named Defendants in and to the property hereinbefore described, Plaintiffs reserve the right to add the name or names of such additional owner or owners, or claimant or claimants, whose interest may subsequently appear, in order to acquire the title in this proceeding for public road purposes as provided by law.

VI.

The County of Hays having heretofore declared the necessity and public convenience by its Resolution to acquire such land for the purpose aforesaid, the Commissioners Court of Hays County, Texas, on the 26th day of April, 2005, passed a Resolution declaring such fact, and authorizing and directing the filing of this condemnation suit by the undersigned Attorney for the County of Hays, for and in behalf of the County of Hays.

WHEREFORE, premises considered, Plaintiff prays that Special Commissioners be appointed as required by law; that the Special Commissioners so appointed set a date for the hearing; that Defendants be notified of the date of such hearing; that at said hearing, the Special Commissioners assess the value of the property and land belonging to the Defendants which is sought to be condemned, and assess damages, if there be any, that would be occasioned to the remainder of the Defendants' land by acquisition and use, as aforesaid; that Plaintiffs have a decree of condemnation vesting all right, title, and interest of the Defendants fee simple in and to the property here before described in the County of Hays for right-of-way and improvements to a County Road, namely Nutty Brown Road, and that upon payment into the Registry of the Court of the amount awarded the Defendants by the Special Commissioners herein appointed, the Plaintiffs have a writ of possession issued in their behalf; as all provided by law; for costs of court and for such other and further relief, both general and special, as Plaintiff may be entitled to receive.

Respectfully submitted,



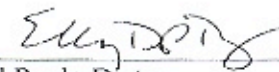
Attorney for Hays County
ELLY DEL PRADO DIETZ
DUVALL & GRUNING, PLLC.
112 North LBJ Drive
San Marcos, Texas 78666
(512) 396-2051
Fax (512) 392-5303
SBN 05857170

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of April, 2005, a true and correct copy of the forgoing Plaintiffs' Original Petition was served upon the following parties of record:

W. Nicholas Burkhalter and Karen Ford
13500 Nutty Brown Road
Austin, Texas 78737

Chase Manhattan Mortgage Corporation
c/o CT Corporation System
350 North St. Paul Street
Dallas, Texas 75201



Elly Del Prado Dietz

STATE OF TEXAS
COUNTY OF HAYS

§
§
§

FIELDNOTE DESCRIPTION, to accompany survey, of a tract or parcel of land containing 0.8677 acres (37,799 square feet), situated in the Nevi Chamberlain Survey No. 2, Hays County, Texas, being a portion of that 10.352 acre tract (being the total of Tract 1 having 2.497 acres, Tract 2 having 2.500 acres and Tract 3 having 5.355 acres) conveyed to W. Nicholas Burkhalter by deed recorded in Volume 1100, Page 687 of the Deed Records of Hays County, Texas; the herein described 0.8677 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found for the southeast corner of the said 5.355 acre Tract 3, being a northeast corner of that 127.77 acre tract conveyed to Tom H. Davis by deed recorded in Volume 216, Page 314 of the said Deed Records, and a point on the west right-of-way line of existing Nutty Brown Road (as defined by deed lines), from which a fence corner post found on the east line of the said 127.77 acre tract and the existing west right-of-way line of Nutty Brown Road, bears S34°39'35"E, 365.64 feet;

THENCE, S40°45'28"W, leaving the existing west right-of-way line of Nutty Brown Road, with the common line between the said 5.355 acre tract and the 127.77 acre tract, for a distance of 41.26 feet to a ½" iron rod set for the southwest corner of the herein described tract, being a point on the proposed west right-of-way line of Nutty Brown Road, and being 45.00 feet left of proposed Nutty Brown Road centerline station 98+11.98, from which a fence corner post found for the southwest corner of the aforesaid 5.355 acre tract, being an ell corner of the said 127.77 acre tract, bears S40°45'28"E, 240.30 feet;

THENCE, leaving the northerly line of the said 127.77 acre tract, across the said Tracts 1 through 3, totaling 10.352 acres, with the proposed west right-of-way line of Nutty Brown Road, for the following five (5) courses:

- 1) N31°31'25"W, 88.28 feet to a ½" iron rod set for the point of curvature of a non-tangent curve to the right, being 40.00 feet left of proposed Nutty Brown Road centerline station 99+00.11;
- 2) With the said curve to the right having a central angle of 13°56'53", a radius of 3040.00 feet, a chord distance of 738.23 feet (chord bears N27°47'47"W), for an arc distance of 740.05 feet to a ½" iron rod set on the north line of the said 5.355 acre Tract 3, being on the south line of the 2.497 acre Tract 1, and being 40.00 feet left of proposed Nutty Brown Road centerline station 106+30.43, from which a 60d nail found for the common front corner of the said 5.355 acre Tract 3 and the 2.497 acre Tract 1, bears N47°57'03"E, 24.95 feet;

EXHIBIT

A

- 3) S47°57'03"W, with the common line between the said 5.355 acre Tract 3 and the 2.497 acre Tract 1, for a distance of 5.36 feet to a ½" iron rod set on a curve to the right, being 45.00 feet left of proposed Nutty Brown Road centerline station 106+28.51;
- 4) With the said curve to the right having a central angle of 00°51'33" a radius of 3045.00 feet, a chord distance of 45.67 feet (chord bears N20°25'46"W), for an arc distance of 45.67 feet to a ½" iron rod set for the point of tangency, being 45.00 feet left of proposed Nutty Brown Road centerline station 106+73.50;
- 5) N19°59'59"W, at a distance of 230.80 feet pass a ½" iron rod set on the north line of the said 2.497 acre Tract 1, being the south line of the 2.500 acre Tract 2, and being 45.00 feet left of proposed Nutty Brown Road centerline station 109+04.30, for a total distance of 462.14 feet to a ½" iron rod set on the north line of the aforesaid 2.500 acre Tract 2, being on the southerly line of that 13.980 acre tract conveyed to The Ermengarde "Cissy" Sweeney Living Trust in Document No. 9700042 of the Official Public Records of Hays County, Texas, being 45.00 feet left of proposed Nutty Brown Road centerline station 111+35.64, from which a ½" iron rod found for the northwest corner of the said 2.500 acre Tract 2, bears S47°54'27"W, 546.78 feet;

THENCE, N47°54'27"E, leaving the proposed westerly line of Nutty Brown Road, with the common line between the said 2.500 acre Tract 2 and the 13.980 acre tract, for a distance of 32.22 feet to a ½" iron rod found for the northeast corner of the aforesaid 2.500 acre Tract 2, being the southeast corner of the said 13.980 acre tract and a point on the existing west right-of-way line of Nutty Brown Road;

THENCE, leaving southerly line of the said 13.980 acre tract, with the common line between said Tracts 1 through 3, totaling 10.352 acres, and the existing west right-of-way of Nutty Brown Road, for the following three (3) courses:

- 1) S19°50'23"E, at a distance of 231.63 feet pass a calculated point for the common front corner of the 2.500 acre Tract 2 and the 2.497 acre Tract 1, for a total distance of 508.54 feet to a 60d nail found for the common front corner of the said 2.497 acre Tract 1 and the 5.355 acre Tract 3;
 - 2) S23°49'18"E, 419.27 feet to a 60d nail found for corner;
-

- 3) S34°47'58"E, 402.11 feet to the POINT OF BEGINNING and containing within these metes and bounds 0.8677 acres of land area.

Note: "1/2" iron rod set" denotes a 1/2" iron rod set with plastic cap marked "Capital Surveying Company, Inc."

Basis of Bearing is the State Plane Coordinate System, South Central Zone, NAD 83.

That I, Gregory A. Way, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 11th day of November, 2004.





Gregory A. Way
Registered Professional Land Surveyor
No. 4567 - State of Texas

**SURVEY TO ACCOMPANY FIELD
NOTES OF A 0.8677 ACRE TRACT
(PARCEL 34)
OUT OF THE NEVI CHAMBERLAIN
SURVEY No.2,
HAYS COUNTY, TEXAS**

5.87 AC.
MARY E. GLOSSON
EXECUTOR'S DEED
V. 618 P. 655
H.C.D.R.

**PARCEL 34
0.8677 ACRE
(37,799 Sq.Ft.)**

NEVI CHAMBERLAIN
SURVEY No. 2

W. NICHOLAS BURKHALTER
5.355 AC.
TRACT 3
V. 1100 P. 687
Doc. No. 366613
O.P.R.H.C.

17.342 AC.
CYNTHIA ANN HOWZE
V. 1088 P. 757
H.C.D.R.

127.77 AC.
TOM H. DAVIS
V. 216 P. 314
H.C.D.R.

378.27
S47°57'05"W
5.36

SEE SHEET 5 OF 5
MATCHLINE

NUTTY BROWN ROAD

PROPOSED
NUTTY BROWN
R.O.W. LINE

Sta. 99+00.11
40.00' LT.

Sta. 98+11.98
45.00' LT.

POINT OF
BEGINNING

FENCE
CORNER

FENCE
CORNER

SCALE: 1" = 100'

LEGEND

- O.P.R.H.C. OFFICIAL PUBLIC RECORDS HAYS COUNTY
- H.C.D.R. HAYS COUNTY DEED RECORD
- R.O.W. RIGHT OF WAY
- () RECORD INFORMATION
- 1/2" IRON ROD FOUND
UNLESS OTHERWISE NOTED
- ▲ CALCULATED POINT
- 1/2" IRON ROD SET W/ PLASTIC CAP
MARKED "CAPITAL SURVEYING CO., INC"
- △ 60d NAIL FOUND
- BREAK IN SCALE

I HEREBY CERTIFY THAT THIS SURVEY AND
ACCOMPANYING FIELDNOTE DESCRIPTION REPRESENT
THE RESULTS OF A RIGHT OF WAY SURVEY MADE
ON THE GROUND UNDER MY DIRECTION AND
SUPERVISION AND IS TRUE AND CORRECT.

GREGORY A. WAY
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 4567, STATE OF TEXAS



C.S.C.I. DWG. #02548NB-34.dwg

SHEET 4 OF 5

CSCI

CAPITAL
SURVEYING
COMPANY
INCORPORATED

1101 Capital of Texas Highway South

Building D, Suite 110

NOTES:

1. THIS SURVEY PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
2. BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM - SOUTH CENTRAL ZONE, NAD 83.
3. THIS SURVEY IS ACCOMPANIED BY A PROPERTY DESCRIPTION OF EVEN DATE.
4. STATIONS AND OFFSETS SHOWN ARE TO PROPOSED NUTTY BROWN CENTERLINE AS SHOWN ON STRIP MAPS.

**SURVEY NO. 2 ACCOMPANY FIELD
NOTES OF A 0.8677 ACRE TRACT
(PARCEL 34)
OUT OF THE NEVI CHAMBERLAIN
SURVEY No.2,
HAYS COUNTY, TEXAS**

13.980 AC.
THE ERMENGARDE
"CISSY" SWEENEY
LIVING TRUST
V. 1279 P. 642
Doc. No. 9700042
O.P.R.H.C.

N47°54'27"E
32.22'
Sta. 111+35.64
45.00' LT.

PROPOSED
NUTTY BROWN
R.O.W. LINE

Sta. 109+04.30
45.00' LT.

W. NICHOLAS BURKHALTER
2.500 AC.
TRACT 2
V. 1100 P. 687
Doc. No. 366613
O.P.R.H.C.

15.48 AC.
ARTURO DAVID GARZA
V.1221 P.428
H.C.D.R.

L1
N47°57'03"E
24.95'
L2
N47°56'46"E
31.52'
C1
Δ=00°51'33"
R=3045.00'
A=45.67'
C=45.67'
Cb=N20°25'46"W

Sta. 106+73.50
45.00' LT.

Sta. 106+28.51
45.00' LT.

W. NICHOLAS BURKHALTER
2.497 AC.
TRACT 1
V. 1100 P. 687
Doc. No. 366613
O.P.R.H.C.

Sta. 106+30.43
40.00' LT.

**PARCEL 34
0.8677 ACRE
(37,799 Sq.Ft.)**

NEVI CHAMBERLAIN
SURVEY No. 2

SCALE: 1" = 100'

C.S.C.I. DWG. #02548NB-34.dwg

SHEET 5 OF 5

CSCI

CAPITAL
SURVEYING
COMPANY
INCORPORATED

1101 Capital of Texas Highway South

Building D, Suite 110

W. NICHOLAS BURKHALTER

MATCHLINE
SEE SHEET 4 OF 5

CAUSE NO. 9052-C

FILED
HAYS COUNTY, TEXAS
at _____ o'clock _____ M.


HAYS COUNTY, TEXAS
Plaintiff,

v.

W. NICHOLAS BURKHALTER,
KAREN FORD and
CHASE MANHATTAN MORTGAGE
CORPORATION

§
§
§
§
§
§
§

PROCEEDINGS IN AUG 10 2005
EMINENT DOMAIN


COUNTY CLERK

COUNTY COURT AT LAW #1

HAYS COUNTY, TEXAS

DEFENDANT CHASE MANHATTAN MORTGAGE CORPORATION'S
ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Chase Manhattan Mortgage Corporation ("Chase"), and file this its Original Answer and in support thereof, shows as follows:

I.
GENERAL DENIAL

Chase denies each and every allegation contained in Plaintiff's Original Petition pursuant to Rule 92 of the Texas Rules of Civil Procedure.

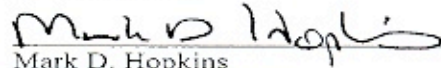
II.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant Chase Manhattan Mortgage Corporation requests judgment of the Court that Plaintiff takes nothing by this suit, and that Defendant recover all costs together with such other and further relief to which it may be justly entitled.

Respectfully submitted,

SAVRICK, SCHUMANN, JOHNSON, MCGARR
KAMINSKI & SHIRLEY

By:



Mark D. Hopkins
State Bar No. 00793975
The Overlook at Gaines Ranch
4330 South Mopac, Suite 150
Austin, Texas 78735
(512) 347-1604
(512) 347-1676 Fax

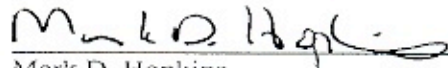
COUNSEL FOR CHASE MANHATTAN
MORTGAGE CORPORATION

CERTIFICATE OF SERVICE

Pursuant to Texas Rules of Civil Procedure 21 and 21a, a true and correct copy of the foregoing has been served upon all counsel of record via facsimile transmission and certified mail, return receipt requested, on this the 9th day of August, 2005.

Elly Del Prado Dietz
DUVALL & GRUNING, PLLC
112 North LBJ Drive
San Marcos, Texas 78666
Fax: (512) 392-5303

David Braun
BRAUN & ASSOCIATES
14101 West Hwy 290, Suite 400-C
Austin, Texas 78737-9338
Fax: (512) 894-5426



Mark D. Hopkins

FILED
HAYS COUNTY, TEXAS
at _____ o'clock _____ M.

NOV 2 2005

CAUSE NO. 9052-C

HAYS COUNTY, TEXAS
Plaintiff

V.

W. NICHOLAS BURKHALTER,
KAREN FORD and
CHASE MANHATTAN MORTGAGE
CORP.
Defendants

*
*
*
*
*
*
*
*

PROCEEDINGS IN
EMINENT DOMAIN
CLERK

COUNTY COURT AT LAW # 1

HAYS COUNTY, TEXAS

JUDGMENT OF COURT IN ABSENCE OF OBJECTION

BE IT REMEMBERED:

That on this date there came on to be heard and considered the decision of the Special Commissioners filed on September 9, 2005, with the Judge of said Court aforesaid under the above-entitled and numbered cause, which is a condemnation proceeding in which the County of Hays is Plaintiff and the following are Defendants: W. Nicholas Burkhalter, Karen Ford and Chase Manhattan Mortgage Corporation. It appears to the Court, and it is so found, that no objections to said decision were filed within the time provided by law and that said decision has been filed with the Clerk of this Court.

It is, therefore, ORDERED, ADJUDGED and DECREED by the Court as follows:

1. That said decision of said Special Commissioners be, and the same is hereby, made the judgment of this Court.
2. That the Clerk of this Court record said decision in the minutes of this Court.
3. That by virtue of said decision of said Special Commissioners, the County of Hays is entitled to condemn and does hereby have judgment against the above-named Defendants for the fee estate in the property situated in Hays County, Texas, and described in Exhibit "A" attached hereto and incorporated herein for all purposes.

Except there shall be excluded from said estate all the oil, gas and sulphur which can be removed from beneath said land without any right whatever remaining to the owners of said oil,

gas and sulphur of ingress or egress to or from the surface of the land condemned for the purpose of exploring, developing, drilling or mining of the same.

4. That the undersigned, in consideration of and other good and valuable consideration, the receipt of which is hereby acknowledged, has released and discharged and does by these presents release and discharge that one certain *Notice of Lis Pendens* filed on May 11, 2005 and recorded in Volume 2684 Page 650, of the Hays County Deed Records reflecting suit filed in the County Court at Law Number 1 of Hays County, Texas, styled *Hays County, Texas v. W. Nicholas Burkhalter, et al.*, Cause No. 9052-C, said Lis Pendens affecting the real estate described in Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

5. It further appears that the County of Hays has deposited in this Court the amount of damages awarded by said Special Commissioners against the County of Hays, to-wit: the sum of Twenty-Five Thousand Five Hundred Sixteen and 00/100 (\$25,516.00) Dollars.

It is therefore ordered that a writ of possession issue in behalf of the County of Hays.

6. That the costs of said proceeding are to be paid by the County of Hays as provided in said decision of said Special Commissioners, which costs shall be paid only to the County Clerk of Hays County, Texas.

SIGNED this the 2 day of November, 2005.


HOWARD S. WARNER, II
JUDGE, County Court at Law #1
Hays County, Texas

APPROVED AS TO FORM:


Elly Del Prado Dietz
Duvall & Gruning, PLLC
112 North LBJ Drive
San Marcos, Texas 78666
Phone (512) 396-2051
Fax (512) 392-5303
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing *Judgment of Court in Absence of Objection* has been sent via certified mail, return receipt requested, to:

W. Nicholas Burkhalter
Karen Ford
13500 Nutty Brown Road
Austin, Texas 78737

Cassie Gresham
Braun & Associates
14101 Hwy 290 West, Suite 400C
Austin, Texas 78737

Mark Hopkins
Savrick Schumann Johnson McGarr Kaminski & Shirley
4330 South Mopac, Suite 150
Austin, Texas 78735



ELLY DEL PRADO DIETZ

STATE OF TEXAS §
 §
COUNTY OF HAYS §

FIELDNOTE DESCRIPTION, to accompany survey, of a tract or parcel of land containing 0.8677 acres (37,799 square feet), situated in the Nevi Chamberlain Survey No. 2, Hays County, Texas, being a portion of that 10.352 acre tract (being the total of Tract 1 having 2.497 acres, Tract 2 having 2.500 acres and Tract 3 having 5.355 acres) conveyed to W. Nicholas Burkhalter by deed recorded in Volume 1100, Page 687 of the Deed Records of Hays County, Texas; the herein described 0.8677 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod found for the southeast corner of the said 5.355 acre Tract 3, being a northeast corner of that 127.77 acre tract conveyed to Tom H. Davis by deed recorded in Volume 216, Page 314 of the said Deed Records, and a point on the west right-of-way line of existing Nutty Brown Road (as defined by deed lines), from which a fence corner post found on the east line of the said 127.77 acre tract and the existing west right-of-way line of Nutty Brown Road, bears S34°39'35"E, 365.64 feet;

THENCE, S40°45'28"W, leaving the existing west right-of-way line of Nutty Brown Road, with the common line between the said 5.355 acre tract and the 127.77 acre tract, for a distance of 41.26 feet to a ½" iron rod set for the southwest corner of the herein described tract, being a point on the proposed west right-of-way line of Nutty Brown Road, and being 45.00 feet left of proposed Nutty Brown Road centerline station 98+11.98, from which a fence corner post found for the southwest corner of the aforesaid 5.355 acre tract, being an ell corner of the said 127.77 acre tract, bears S40°45'28"E, 240.30 feet;

THENCE, leaving the northerly line of the said 127.77 acre tract, across the said Tracts 1 through 3, totaling 10.352 acres, with the proposed west right-of-way line of Nutty Brown Road, for the following five (5) courses:

- 1) N31°31'25"W, 88.28 feet to a ½" iron rod set for the point of curvature of a non-tangent curve to the right, being 40.00 feet left of proposed Nutty Brown Road centerline station 99+00.11;
- 2) With the said curve to the right having a central angle of 13°56'53", a radius of 3040.00 feet, a chord distance of 738.23 feet (chord bears N27°47'47"W), for an arc distance of 740.05 feet to a ½" iron rod set on the north line of the said 5.355 acre Tract 3, being on the south line of the 2.497 acre Tract 1, and being 40.00 feet left of proposed Nutty Brown Road centerline station 106+30.43, from which a 60d nail found for the common front corner of the said 5.355 acre Tract 3 and the 2.497 acre Tract 1, bears N47°57'03"E, 24.95 feet;



- 3) S47°57'03"W, with the common line between the said 5.355 acre Tract 3 and the 2.497 acre Tract 1, for a distance of 5.36 feet to a ½" iron rod set on a curve to the right, being 45.00 feet left of proposed Nutty Brown Road centerline station 106+28.51;
- 4) With the said curve to the right having a central angle of 00°51'33" a radius of 3045.00 feet, a chord distance of 45.67 feet (chord bears N20°25'46"W), for an arc distance of 45.67 feet to a ½" iron rod set for the point of tangency, being 45.00 feet left of proposed Nutty Brown Road centerline station 106+73.50;
- 5) N19°59'59"W, at a distance of 230.80 feet pass a ½" iron rod set on the north line of the said 2.497 acre Tract 1, being the south line of the 2.500 acre Tract 2, and being 45.00 feet left of proposed Nutty Brown Road centerline station 109+04.30, for a total distance of 462.14 feet to a ½" iron rod set on the north line of the aforesaid 2.500 acre Tract 2, being on the southerly line of that 13.980 acre tract conveyed to The Ermengarde "Cissy" Sweeney Living Trust in Document No. 9700042 of the Official Public Records of Hays County, Texas, being 45.00 feet left of proposed Nutty Brown Road centerline station 111+35.64, from which a ½" iron rod found for the northwest corner of the said 2.500 acre Tract 2, bears S47°54'27"W, 546.78 feet;

THENCE, N47°54'27"E, leaving the proposed westerly line of Nutty Brown Road, with the common line between the said 2.500 acre Tract 2 and the 13.980 acre tract, for a distance of 32.22 feet to a ½" iron rod found for the northeast corner of the aforesaid 2.500 acre Tract 2, being the southeast corner of the said 13.980 acre tract and a point on the existing west right-of-way line of Nutty Brown Road;

THENCE, leaving southerly line of the said 13.980 acre tract, with the common line between said Tracts 1 through 3, totaling 10.352 acres, and the existing west right-of-way of Nutty Brown Road, for the following three (3) courses:

- 1) S19°50'23"E, at a distance of 231.63 feet pass a calculated point for the common front corner of the 2.500 acre Tract 2 and the 2.497 acre Tract 1, for a total distance of 508.54 feet to a 60d nail found for the common front corner of the said 2.497 acre Tract 1 and the 5.355 acre Tract 3;
 - 2) S23°49'18"E, 419.27 feet to a 60d nail found for corner;
-

- 3) S34°47'58"E, 402.11 feet to the POINT OF BEGINNING and containing within these metes and bounds 0.8677 acres of land area.

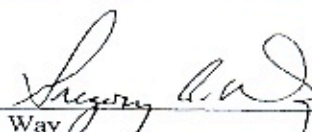
Note: "1/2" iron rod set" denotes a 1/2" iron rod set with plastic cap marked "Capital Surveying Company, Inc."

Basis of Bearing is the State Plane Coordinate System, South Central Zone, NAD 83.

That I, Gregory A. Way, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 11th day of November, 2004.





Gregory A. Way
Registered Professional Land Surveyor
No. 4567 - State of Texas

**SURVEY OF ACCOMPANY FIELD
NOTES OF A 0.8677 ACRE TRACT
(PARCEL 34)
OUT OF THE NEVI CHAMBERLAIN**

LEGEND

- O.P.R.H.C. OFFICIAL PUBLIC RECORDS HAYS COUNTY
H.C.D.R. HAYS COUNTY DEED RECORD
R.O.W. RIGHT OF WAY
() RECORD INFORMATION
● 1/2" IRON ROD FOUND
UNLESS OTHERWISE NOTED
▲ CALCULATED POINT
○ 1/2" IRON ROD SET W/ PLASTIC CAP
MARKED "CAPITAL SURVEYING CO., INC"
△ 60d NAIL FOUND
— BREAK IN SCALE

I HEREBY CERTIFY THAT THIS SURVEY AND
ACCOMPANYING FIELDNOTE DESCRIPTION REPRESENT
THE RESULTS OF A RIGHT OF WAY SURVEY MADE
ON THE GROUND UNDER MY DIRECTION AND
SUPERVISION AND IS TRUE AND CORRECT.

Gregory A. Way 11-11-07
GREGORY A. WAY
REGISTERED PROFESSIONAL LAND SURVEYOR
NO. 4567, STATE OF TEXAS



C.S.C.I. DWG. #02548NB-34.dwg

SHEET 4 OF 5

CSCI

1101 Capitol of Texas Highway South

CAPITAL
SURVEYING
COMPANY
INCORPORATED
Building D, Suite 110

PROPOSED
NUTTY BROWN
R.O.W. LINE

Sta. 99+00.11
40.00' LT.

Sta. 98+11.98
45.00' LT.

FENCE
CORNER

127.77 AC.
TOM H. DAVIS
V. 216 P. 314
H.C.D.R.

FENCE
CORNER

NOTES:

1. THIS SURVEY PREPARED WITHOUT THE BENEFIT OF A TITLE REPORT.
2. BEARINGS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM - SOUTH CENTRAL ZONE, NAD 83.
3. THIS SURVEY IS ACCOMPANIED BY A PROPERTY DESCRIPTION OF EVEN DATE.
4. STATIONS AND OFFSETS SHOWN ARE TO PROPOSED NUTTY BROWN CENTERLINE AS SHOWN ON STRIP MAPS.

**SURVEY TO ACCOMPANY FIELD
NOTES OF A 0.8677 ACRE TRACT
(PARCEL 34)
OUT OF THE NEVI CHAMBERLAIN
SURVEY No.2,
HAYS COUNTY, TEXAS**

13.980 AC.
THE ERMENGARDE
"CISSY" SWEENEY
LIVING TRUST
V. 1279 P. 642
Doc. No. 9700042
O.P.R.H.C.

PROPOSED
NUTTY BROWN
R.O.W. LINE

15.48 AC.
ARTURO DAVID GARZA
V.1221 P.426
H.C.D.R.

W. NICHOLAS BURKHALTER
2.500 AC.
TRACT 2
V. 1100 P. 687
Doc. No. 366613
O.P.R.H.C.

W. NICHOLAS BURKHALTER
2.497 AC.
TRACT 1
V. 1100 P. 687
Doc. No. 366613
O.P.R.H.C.

PARCEL 34
0.8677 ACRE
(37,799 Sq.Ft.)

NEVI CHAMBERLAIN
SURVEY No. 2

L1
N47°57'03"E
24.95'
L2
N47°56'46"E
31.52'
C1
 $\Delta=00°51'33"$
R=3045.00'
A=45.87'
C=45.87'
Cb=N20°25'46"W

$\Delta=13°58'33"$
R=3045.00'
A=45.87'
C=45.87'
Cb=N27°17'47"W

MATCHLINE
SEE SHEET 4 OF 5

W. NICHOLAS BURKHALTER



SCALE: 1" = 100'

C.S.C.I. DWG. #02548NB-34.dwg

SHEET 5 OF 5

CSCI

1101 Capital of Texas Highway South

CAPITAL
SURVEYING
COMPANY
INCORPORATED
Building G, Suite 110